

be levied under authority from the legislature, to be used in aid of such enterprises. It is not improper to say that while this is all now settled in our state as an original question, the writer of this opinion did not and does not now concur in its correctness. The question, however, is whether, under the statutes existent at this time these bonds were authorized, the power to issue them is given. We need not, as we have said, go into the question of the constitutional power to authorize them. We need scarcely say that in order to the issuance of such bonds there must be an express authority given the city or town, either by a general law of the land, or by a special law for this purpose. No such power can be implied or can be inferred from any of the ordinary powers of such corporations. "No argument," says Judge MCKINNEY, in the case of *Cook v. Sumner Spinning & Manuf'g Co.* 1 Sneed, 714, "can be necessary to show that the authority to purchase stock in a manufacturing company, or to issue bonds for the payment thereof, cannot be derived simply from the power of taxation conferred in a charter." See, also, 9 Heisk. 534.

Taxation and payment of all liabilities directly from this means is the normal work of action by such bodies. Bonds on time are not incident to this, and can only be issued when authority is conferred by law. The old act of 1852, Code, § 1142, and other provisions of that article, is the basis in our general law for such action as may be taken by counties and corporations in subscribing for stock in railroads running to or contiguous to such towns. It is too clear for argument that no such authority is found in these sections. The act of January, 1871, intended to regulate elections, under the constitution, in first section, simply embodies the authority contained in the constitution as to counties and towns levying taxes for county and corporation purposes, prescribing in the subscriptions the conditions and regulations by which the power shall be executed. But there is nothing in this act that can possibly be construed on any fair principle of construction to authorize the issuance of these bonds in payment of a subscription of stock in a railroad company. What was intended by the reference to "execution of all necessary orders, bonds, and payments, in order to carry out" a loan or credit, we need not now determine. See section 2; Code, § 491*c*. It suffices that there is no authority in this act to issue such bonds as are the basis of this suit; the same having been issued without authority of law, are simply void, whether in the hands of innocent purchasers or others.

Reversed, etc.

[Signed]

FREEMAN, J.

BRAMAN v. SNIDER and another.

(Circuit Court, D. Minnesota. October 22, 1884.)

BANKRUPTCY—JUDGMENT OBTAINED ON PROVABLE CLAIM—DISCHARGE.

On August 8, 1873, suit was commenced in New York against S. & G., and judgment by default entered March 29, 1876, for \$3,199.09. S. failed in 1873, and removed to Minnesota in 1875, where he filed his petition in bankruptcy, and was adjudged a bankrupt, July 15, 1876. The schedule filed by him set out the New York judgment. November 25, 1876, he obtained his discharge. On April 6, 1876, the judgment by default in New York, of March 29, 1876, was, on motion of his attorney, set aside, a trial had October 10, 1876, and judgment for \$3,336.25 entered against him, October 14, 1876. There was no communication between S. and his attorney after S. left New York. *Held*, that the debt or claim in the pending suit in New York was provable, under section 5057 of the United States Revised Statutes, after the adjudication of bankruptcy of July 15, 1876, and, although the judgment was entered before the certificate of discharge was granted, an action on the judgment was barred by the discharge.

In Bankruptcy.

C. A. Congdon, for plaintiff.

J. M. Shaw, for defendants.

NELSON, J. This action is brought upon a judgment obtained in the supreme court of the state of New York against Samuel P. Snider and Willoughby H. Giffney, on October 10, 1876. Defendant Snider answers, and sets up his discharge in bankruptcy as a bar to recovery. I find the following facts:

On August 8, 1873, a suit was commenced by Braman & Boynton, in the supreme court of the state of New York, against the firm of Snider & Giffney, and on failure of the defendants to appear at the trial by the court, a verdict was rendered and judgment entered and filed March 29, 1876, for \$3,199.09. The defendant Snider became insolvent in the fall of 1873, and left the city of New York and became a resident of the state of Minnesota in 1875. In July, 1876, he filed his petition in bankruptcy and was adjudged a bankrupt July 15, 1876. The schedules filed by him set forth a judgment obtained against the firm of which he was a member in March, 1876, by Braman & Boynton, in the city of New York, and stated the amount at about \$3,000. On November 25, 1876, he was discharged and received his certificate. On April 6, 1876, his attorney obtained an order setting aside the judgment entered March 29, 1876; and on October 10, 1876, the case was again tried, and the defendants not appearing, a verdict was rendered and a judgment was entered and filed for the sum of \$3,336.25. There was no communication between Snider and his attorney after he left New York. Boynton assigned his interest in the judgment before this suit was commenced.

CONCLUSION.

If it is conceded that the debtor's attorney in New York had authority to obtain an order setting aside the judgment entered March 29, 1876, I am still of the opinion that the debt or claim in the pending suit in the New York supreme court was provable under section 5067, Rev. St., against the bankrupt's estate after the adjudication, July 15, 1876; and although a judgment was entered before the certificate of discharge was granted, the debt on which the judgment was entered being a provable claim existing at the time of adjudication, is barred by the discharge. The terms of the certificate of discharge, enacted by section 5115, Rev. St., declares that the bankrupt "is discharged from all debts and claims made provable" by the bankrupt law, and "which existed on the day on which the petition for adjudication was filed." The doctrine of merger and extinguishment of the debt, and that the judgment constitutes a new debt from the time of the recovery, is not applicable under the bankrupt act.

Judgment for defendants.

UNITED STATES v. KOCH.¹

(Circuit Court, E. D. Missouri. October 2, 1884.)

1. PENSIONS—CHARGING ILLEGAL FEE—INDICTMENT.

An indictment for charging and collecting an illegal fee for obtaining a pension, need not state how the accused was instrumental, and what he did, in procuring the pension.

2. SAME—MALICE.

It is also unnecessary for it to state that the defendant "willfully and wrongfully," or "unlawfully," did the act charged.

3. SAME—ADMISSIBILITY OF EVIDENCE OF A SHAM SALE.

Where the indictment charges the receipt of a sum in excess of what may be legitimately charged, evidence is admissible to prove that he sold the pensioner property for a sum largely in excess of its value, if supplemented by proof that the sale was a mere trick to obtain an unlawful fee.

4. SAME—PRACTICE—BILL OF EXCEPTIONS.

Where a bill of exceptions states in such a case that a sale to the pensioner for a price largely in excess of the real value of the property sold was proved, and is silent as to whether or not the necessary supplemental evidence was introduced, it will be presumed that it was.

Indictment for Charging and Collecting an Illegal Fee for Obtaining a Pension.

William H. Bliss, for the Government.

D. P. Dyer, for defendant.

BREWER, J. In the case of the United States against Louis F. Koch, tried in the district court and convicted there, a writ of error was taken to this court. The indictment charges that the defendant, having been instrumental in obtaining pensions for certain parties, did thereafter charge and receive more than the fee which is authorized by the statute.

Three substantial questions are presented:

1. The indictment charges that the defendant, having been instrumental in procuring the pension of the party named, etc. It does not say how he was instrumental, or what he did in procuring that pension, and the claim is that this indictment should charge how he was instrumental, and what he did in procuring the pension. This is unnecessary. The *gravamen* of the offense is not that he was instrumental in procuring the pension; that simply describes the person who is within the purview of the statute. In the *Britton Case*, a late supreme court decision, (107 U. S. 669; 2 Sup. Ct. Rep. 512,) the charge was that the defendant, being president of a bank, willfully misapplied the funds of the bank. Now, as has been well said by counsel for the government, whatever criticism might have been made and was made upon the use of the words that he "willfully misapplied," nothing was said, nothing ought to have been said, as to the simple allegation that the defendant was president of the bank; that was a mere *descriptio personæ*. And here the fact that the defendant

¹ Reported by Benj. F. Rex, Esq., of the St. Louis bar