

BISSELL *v.* TOWNSHIP OF SPRING VALLEY.

Circuit Court, D. Kansas.

June 8, 1886.

MUNICIPAL

CORPORATIONS—BONDS—ACTION—PLEADING—FORGERY.

An allegation that municipal bonds were duly issued and registered is conclusive, on demurrer to a pleading which alleges the forgery of the bonds.

Action to Recover the Money Due on Town Bonds. Answer, alleging that clerk's signature to the bonds was forged. Demurrer to answer.

Alfred Ennis, for plaintiff.

Rossington, Smith & Dallas, for defendant.

BREWER, J. In this case, an action on township bonds, a demurrer to the first count in the answer has been argued. The petition alleges that the bonds were issued and registered; and, in respect to the registry, as the bonds were issued before the act of 1872 was passed, it details that they were presented to the auditor, by him certified, notice thereof given by him to the officers issuing the bonds, and that by them such notice was entered upon the official records of the bonds. The first count in the answer avers that the signature of the county clerk to the bonds was forged, and that the seal of the county was not affixed by him.

A case between the same parties, upon the same issue of bonds, went to the supreme court of the United States, and is reported in 110 U. S. 162, 3 Sup. Ct. Rep. 555, in which the same answer was presented, a demurrer to it overruled, and that ruling sustained by the supreme court. But in the opinion then filed that court said that the averments of the petition respecting the auditor's certificate and the registration were insufficient, in that they did not show that notice was given by the auditor to the officers who had in the first instance issued the bonds, or that such

notice had been entered upon the official record. That averment is in this petition. In other words, counsel have framed this petition to meet the very omissions which the supreme court noticed. So the demurrer will have to be sustained, for a completed registration is conclusive of the validity of bonds as against such a defense as this. *Lewis v. Commissioners*, 105 U. S. 739. ⁵⁵ Of course, the question as to *res judicata*, which is presented in another count, is not affected by this decision.

The demurrer will be sustained, and leave given to file an amendment to answer within 60 days.

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