

there, the contract is binding, although the law of the place of performance may require the contract to be in writing." Citing *Dacosta v. Davis*, 24 N. J. Law, 319.

It is further said by the court that—

"Matters bearing upon the execution, the interpretation, and the validity of a contract are determined by the law of the place where the contract is made. Matters connected with its performance are regulated by the law prevailing at the place of performance. Matters respecting the remedy, such as the bringing of suits, admissibility of evidence, statutes of limitation, depend upon the law of the place where the suit is brought."

In *Pritchard v. Norton*, 106 U. S. 130, 1 Sup. Ct. Rep. 102, the foregoing propositions are again approved. See, also, *Matthews v. Murchison*, 17 Fed. Rep. 768. It follows from the foregoing principles and authorities that, the contract in question having been executed at Louisville, Ky., its validity and binding operation is not to be determined by the Pennsylvania act of June 2, 1874, set up as a defense by the fifth paragraph of the answer, and plaintiff's demurrer thereto should have been sustained.

Other questions presented need not be specially referred to, as the foregoing conclusions dispose of the case. We think the plaintiff's assignments of error are well taken, and that the action of the lower court in overruling plaintiff's demurrer, and in sustaining defendant's demurrer to the petition as amended, and in dismissing the suit, was erroneous, and should be reversed. It is accordingly so ordered and adjudged, and the cause will be remanded to the circuit court for the district of Kentucky for further proceedings therein in conformity with this opinion, and with leave to plaintiff to further amend its petition so as to show the citizenship of its members, if it is an association or limited partnership and not a corporation, as may be necessary under the authority of *Chapman v. Barney*, 129 U. S. 682, 9 Sup. Ct. Rep. 426.

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### POST v. PULASKI COUNTY.

(Circuit Court of Appeals, Seventh Circuit. March 8, 1892.)

#### 1. COUNTY BONDS—RECITAL—NOTICE.

A recital in county bonds that they are issued "pursuant to an order of the county court" puts all persons dealing in the bonds upon inquiry as to the terms of the order.

#### 2. SAME—RAILROAD AID BONDS—VALIDITY.

Act, March 6, 1867, incorporating the C. & V. R. Co., empowered municipal corporations, when authorized by popular vote, to subscribe for stock in the company, and issue bonds in payment therefor. A county agreed, by popular vote, to subscribe for \$100,000 of stock, and issue bonds therefor, but before issuance of the bonds the county authorities agreed to sell the stock back to the company in exchange for \$5,000 in bonds. In fact, only \$95,000 of bonds were issued and delivered to the company, and no stock received by the county. Held, that the bonds were void, since the transaction, being a gift and not a subscription, was not authorized by the statute, nor assented to by the popular vote. *Choisser v. People*, (Ill. Sup.) 29 N. E. Rep. 546, followed.

**8. SAME—CONSTITUTIONAL LAW.**

Act Feb. 9, 1869, (8 Priv. Laws 1869, p. 259.) amending the charter of said railroad company, which attempts to validate all contracts between said company and municipalities, whereby the latter agreed to sell to the company at a nominal price the stock for which they had subscribed, has no effect, where the contract was made by the municipal authorities without being submitted to popular vote, as required by law, since the legislature cannot impose an obligation upon a municipality without its consent, legally expressed. *Chotsser v. People*, (Ill. Sup.) 29 N. E. Rep. 546, followed.

Error to the Circuit Court of the United States for the Southern District of Illinois.

*Assumpsit* by Mary E. Post, as administratrix of the estate of A. T. Post, deceased, against the county of Pulaski. Judgment for defendant. Plaintiff brings error. Affirmed.

*Connolly & Mather* and *John F. Dillon*, for plaintiff in error.

*Saml. P. Wheeler*, (*L. M. Bradley* and *Brown, Wheeler & Brown*, of counsel,) for defendant in error.

Before GRESHAM, Circuit Judge, and BLODGETT and JENKINS, District Judges.

BLODGETT, District Judge. This is an action of *assumpsit* upon 196 interest coupons, of \$20 each, cut from 30 bonds of the defendant county; said bonds being for the sum of \$500 each, of like tenor, all dated October 17, 1872, payable 20 years after date, with interest at the rate of 8 per cent. per annum, payable on the 1st days of January and July in each year, as evidenced by coupons attached; said bonds being part of an issue of 200 bonds, of like tenor and amount, issued by the defendant county in aid of the construction of the Cairo & Vincennes Railroad. Defendant pleaded the general issue, and filed with its plea an affidavit denying the execution by the county of the instruments sued upon. By stipulation in writing between the parties, a jury was waived, and the case tried by the court, who found the issues for the defendant, and entered judgment upon the finding.

The evidence in the bill of exceptions, and the opinion of the court below, which is found in the record, show that the case was heard and considered solely upon the question of the power of the county to issue the bonds from which the coupons in question were cut. The bonds in question each contain the following recital:

"This bond is one of two hundred, of like tenor and amount, of the same issue, and is issued pursuant to an order of the county court of said county, authorized by a majority of the legal votes cast at an election held in said county, pursuant to law, on the 5th day of November, A. D. 1867. This bond is also issued under the provisions of an 'Act to incorporate the Cairo & Vincennes Railroad Company,' approved March 6th, 1867, and under the provisions of an act to amend said act, approved February 9th, 1869; also, under the provisions of an act entitled 'An act to fund and provide for the payment of the railroad debts of counties, townships, cities, and towns,' approved April 16th, 1869, and is in part payment of a subscription to the capital stock of the Cairo & Vincennes Railroad Company, in the total sum of one hundred thousand dollars."

The special statutory authority for the issue of bonds by the county in aid of the railroad named is found in the tenth section of the act of

the general assembly of Illinois, approved March 6, 1867, entitled "An act to incorporate the Cairo & Vincennes Railroad Company," (2 Priv. Laws 1867, p. 561,) as follows:

"The several towns, cities, or counties through or near which said railroad shall pass may subscribe for and take stock in this company, and may issue bonds in payment for such stock of five hundred dollars each, bearing interest at the rate of eight per cent. per annum, or less, payable half-yearly in the city of New York on the 1st days of January and July of each year, said bonds to run not longer than twenty-five years. And a tax of not more than one dollar on each one hundred dollars' worth of taxable property may be levied and collected in such town, city, or county, per annum, to pay the installments on such stock, or to pay the interest and principal of bonds issued in payment for such stock: provided, that no such subscription shall be made, no such bonds shall be issued, and no such tax shall be levied unless a majority of the legal voters of said town, city, or county shall vote for the same at an election to be held under order of the corporate authorities in cases of towns or cities, and of the county court in cases of counties: provided, further, that a majority of legal voters at any such election shall be held as a majority of the legal voters of any such town, city, or county, and the questions of making a subscription, issuing bonds, and levying taxes may be submitted as one question or as separate questions at such election, and either or all of said questions may be submitted to an election at any time, in the discretion of the authorities authorized to call such election."

Power is also given a municipal corporation to issue bonds in payment of subscription to the stock in railroad corporations by an act approved November 6, 1849, entitled "An act supplemental to an act entitled 'An act to provide for a general system of railroad incorporations.'"

Without discussing all the questions made on the argument of the case, we think the record shows one so obvious ground for sustaining the judgment of the court below that no other need be considered. The bonds recite that they are issued "pursuant to an order of the county court of said county, \* \* \* in part payment of a subscription to the capital stock of the Cairo & Vincennes Railroad Company." This recital, that the bonds were issued pursuant to an order of the county court, undoubtedly put all persons dealing in the bonds on inquiry as to the terms of that order. An examination of the records of the county court of the county would have shown, as clearly appears from the proof in this case, that on the 17th day of September, 1867, the court ordered that an election be held in the county, at the various voting precincts, on the 5th day of November, 1867, to vote upon the question of subscribing the sum of \$100,000 to the capital stock of the Cairo & Vincennes Railroad Company, and the issue of the bonds of the county in the denominations of \$500 each, payable in 20 years, bearing interest at 8 per cent. per annum, payable half-yearly, on the 1st days of January and July in each year, in payment for such stock, and that on the 2d day of December, 1867, the county court entered into a contract with the railroad company, which recites that, at an election held in the county on the 5th day of November, 1867, the county court was authorized to make a subscription of \$100,000 to the capital stock of said railroad company, and to pay for said stock in bonds of the county. It

was therefore agreed that the county should sell to the railroad company the \$100,000 of stock so to be issued to the county in payment for said bonds for the sum of \$5,000 in bonds,—in other words, that the county should give \$95,000 of its bonds for \$5,000 of stock in the railroad company; and by orders of the county court entered upon their records at the July term, 1870, June term, 1871, and March term, 1872, which in terms purported to extend from time to time the period within which the railroad should be completed, and yet be entitled to receive the bonds, this provision in regard to the sale of the stock to the railroad company was retained in full force. No actual subscription by the county for the stock of the railroad company was made until March 4, 1872, when the county court, for the first time, made a subscription for the \$100,000 of the stock of the railroad company; and, in the order making this subscription, it was expressly provided that the subscription should in no way invalidate the contract then in force between the county and the railroad company, by which the capital stock received by the county is sold to the railroad company; and in a subsequent order, entered the same day, in regard to the same subject-matter, is the following paragraph:

“And it is further agreed that upon the completion of said road and the delivery of said bonds, upon the terms and conditions hereinbefore expressed, this county will accept and receive the balance of said sum of \$100,000, to-wit, \$5,000, due to said company, in full payment for the sum of \$100,000 stock in said road, and will waive the actual issue thereof to said county.”

There can be no doubt that the legal effect of this contract and the orders of the county court was to donate or give the railroad company \$95,000 in the bonds of the county. The county was to receive no stock, but was to give the railroad company \$95,000 of its bonds. The election held on the 5th of November, 1867, was to vote upon the question of subscribing for \$100,000 of the stock of the company, and issuing the bonds of the county in payment therefor. No special or general statute of the state, then in force, authorized the county to make a donation of its money or bonds in aid of this railroad company. That there is an essential difference between a proposition to subscribe for stock in a railroad company, and thereby become a stockholder, with a right to share in the profits of its business and have a voice in the management and policy of the company, and a proposition to make a donation of bonds or money to the railroad company, is too plain to require argument or the citation of authority. The order of the county court, making the subscription to the stock and directing the issue of the bonds, and which must be read into each bond and coupon, shows in unmistakable language, so plain that it requires no technical skill to construe or apply it, that the bonds were issued as a donation to the railroad company, and not in payment of a subscription to its stock.

The case of *Choisser v. People*, 29 N. E. Rep. 546, lately decided by the supreme court of Illinois,—the manuscript opinion of which has been handed us since the argument of this case,—is almost identical in its facts, as far as the questions now under consideration are concerned,

with this case. It involved an issue of bonds by another county (Saline) in aid of the construction of the same railroad, and in pursuance of the same section of the charter of the railroad company. An agreement between that county and the railroad company was made after the vote authorizing the subscription, in substantially the same terms as was made in the case now under consideration. And in that case the court, speaking by Mr. Justice BAILEY, says in regard to this contract:

"That in its consummation, if not in its inception, the transaction was a donation, pure and simple, is too plain to admit of serious controversy. In the beginning, and until the election was had, the guise of a subscription was resorted to, so as to bring the municipal aid sought to be obtained apparently, at least, within the power conferred upon the county by the tenth section of the railroad company's charter. But, when viewed in the light of the interpretation put upon the transaction by the subsequent acts of the parties, it appears too transparent to mislead. The bonds being essentially a donation, it was not within the power of the county court to issue them, and they must therefore be held to be *ultra vires* and void."

It is further urged in behalf of the appellant that the action of the county court in making the contract in question with the railroad company was validated by the third section of "An act to amend an act entitled 'An act to incorporate the Cairo & Vincennes Railroad Company,'" approved February 9, 1869, (3 Priv. Laws Ill. 1869, p. 259.) This section provides:—

"That all contracts made by towns, cities, and counties, into, through, or near which the Cairo & Vincennes Railroad shall run, whereby, as an inducement for the construction of said railroad, such towns, cities, and counties agreed, upon the completion of certain portions of said railroad, to sell to the said company, at a nominal price, the stock of said company, for which such towns, cities, or counties, by a vote of their electors, had theretofore subscribed and agreed to issue bonds in payment therefor, thereby, in effect, agreeing to make a donation to said company of certain amounts of the bonds of such towns, cities, or counties, as an inducement for the construction of said railroad, are hereby declared to be valid and binding upon such towns, cities, and counties, and shall be carried into effect, in good faith, by the same; and all orders for and notices of elections, and elections and returns of such elections, in respect to such subscriptions of stock to said company, in any such towns, cities, and counties, are hereby declared to be valid and binding upon such towns, cities, or counties."

In reference to the validity of this statute, we cannot express our own views more clearly or forcibly than by quoting from the opinion of the learned judge in the case just referred to, in which he says:

"The only proposition which had been submitted to the vote of the people of the county, and the only proposition which, under existing laws, the county court had power to submit to them, was that of making a subscription to the capital stock of the railroad company, the stock to be received as the consideration, and, presumably, the equivalent, for the county bonds to be issued in pursuance of the subscription. The proposition to donate \$95,000 in county bonds to said railroad company was never submitted to the people of said county, was never voted upon by them, and could not, under then existing laws, have been submitted to such vote. The subsequent contract entered into by the county court, to sell back the stock subscribed for for a nominal consideration, so as to effectually transmute the proposition to subscribe \$100-

000 to the capital stock of said company, to which the people of the county had given their assent, into a proposition to donate to the railroad company \$95,000 of county bonds, to which the people of the county had not, and could not have, given their assent, was clearly void, so as to confer no rights and impose no obligations. \* \* \* In the present case the amendatory act of 1869, if effectual at all, can be held to operate only by way of validating a contract for a donation which, by reason of want of power, as well as the absence of either an intention or opportunity on the part of the legal voters of the county to give their assent to it, was *ultra vires* and void. Declaring such void contract to be valid and binding, and providing that it should be carried into effect in good faith, as said amendatory act undertook to do, was an attempt to impose upon the county an obligation in aid of the railroad without its own consent, expressed in any legal form."

For these reasons, we are of opinion that whoever dealt in those bonds is chargeable with notice from the records of the county court of Pulaski county that the bonds were donated to the railroad company, and were not issued by the county in payment of a subscription to the stock of the company. The recitals in the bonds that they were issued pursuant to an order of the county court put whoever should come into the possession of those bonds, even if purchased for value upon the open market, upon inquiry as to the terms of that order; and it needs no judicial interpretation of the contract referred to in the orders of the county court, to see that the county did not, in legal effect, subscribe for the stock of this railroad, but agreed to donate, and did donate, its bonds in aid of this railroad. The decree of the court below is therefore affirmed.

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*In re* KURSHEEDT MANUF'G CO.

(Circuit Court, S. D. New York. March 9, 1892.)

**1. CUSTOMS DUTIES—ADMINISTRATIVE CUSTOMS ACT JUNE 10, 1890—FINDING OF BOARD OF UNITED STATES GENERAL APPRAISERS.**

In a case arising under section 14, and brought for review before the United States circuit court under section 15 of the administrative customs act of June 10, 1890, (chapter 407, 26 St. U. S. p. 131,) a finding upon a question of fact by the board of United States general appraisers, in the absence of any further or different testimony than that returned to that court by that board, will not be disturbed, but will be affirmed, by that court.

**2. SAME—TARIFF ACT OCT. 1, 1890—VELVETEEN DRESS FACINGS.**

Articles composed of cotton, which are made from colored cotton velvet or velveteen by cutting the same bias into narrow strips or short lengths, and lapping over the ends of such strips, and then sewing together such ends so lapped, and which are principally used for facing skirts of dresses, and not for trimming dresses, and are known commercially, not as trimmings, but as velveteen dress facings, are not dutiable at the rate of 14 cents per square yard, and 20 per centum *ad valorem*, under the provision for "velvets, \* \* \* velveteens, \* \* \* and all pile fabrics composed of cotton, \* \* \* colored," contained in paragraph 350 of the tariff act of October 1, 1890, (chapter 1244, 26 St. U. S. p. 567,) or at the rate of 60 per centum *ad valorem* as trimmings composed of cotton, under the provision for such trimmings contained in paragraph 373 of the same tariff act, but are dutiable at the rate of 40 per centum *ad valorem*, as "manufactures of cotton," under the provision for such manufactures contained in paragraph 355 of the same tariff act.

At Law.

During the year 1891 the Kursheedt Manufacturing Company imported from a foreign country into the United States at this port certain merchandise, consisting of so-called bias velveteen dress facings. This merchandise, having been returned by the local appraiser as colored cotton velvet, cut bias into strips one and one-eighth inches wide, and sewed together, and intended for binding, facing, or trimming dresses, was classified as colored velveteen or velvet, composed of cotton, under the provision for such velveteens and velvets contained in paragraph 350 of the tariff act of October 1, 1890, (chapter 1244, 26 St. U. S. p. 567,) and duty at the rate of 14 cents per square yard, and 20 per cent. *ad valorem*, as prescribed by that paragraph, was exacted thereon by the collector of customs at this port. Against this classification and this exaction the importers protested, claiming that this merchandise was dutiable at the rate of 40 per cent. *ad valorem*, as a manufacture of cotton, under the provision for such manufactures contained in paragraph 355 of the same tariff act. The board of general appraisers to which the invoice of this merchandise, and all the papers and exhibits connected therewith, were transmitted by the said collector pursuant to section 14 of the administrative customs act of June 10, 1890, (chapter 407, 26 St. U. S. p. 131,) after taking testimony, found, among other things: (1) That this merchandise was principally used for facing the skirts of dresses, (and not for trimming dresses;) (2) that it was composed of cotton; (3) that it was commercially known as "velveteen dress facings;" (4) that it was made from cotton velvet or velveteen; (5) that it differed from cotton velvet ribbons and cotton velvet piece goods, it having been cut bias into narrow strips of short lengths, and the ends thereof lapped over and sewed together, thus rendering square-yard measurement difficult, if not almost impossible; (6) that it was not commercially known as trimmings, nor was it chiefly used as trimmings; (7) that it was not dutiable as velvets, velveteens, or other pile fabrics composed of cotton, under the provisions for such velvets, velveteens, and pile fabrics, contained in said paragraph 350, or, as claimed by the said collector, if not so dutiable, at the rate of 60 per centum *ad valorem*, as trimmings composed of cotton, under the provision for such trimmings contained in paragraph 373, but was dutiable as a manufacture of cotton at the rate of 40 per centum *ad valorem*, under the provision for such manufactures contained in said paragraph 355, as claimed by the appellant. From this decision of the board of general appraisers the collector, pursuant to section 15 of the said administrative customs act, appealed to the United States circuit court for a review of the questions of law and fact involved therein. The case was tried upon the return made by the board of general appraisers.

*Edward Mitchell*, U. S. Atty., and *Thomas Greenwood*, Asst. U. S. Atty., for appellant.

*Alexander E. Kursheedt*, for appellees.

LACOMBE, Circuit Judge. I do not think that I should interfere with the finding of the board of general appraisers. This is a case where, un-

der the old practice, I should send it to the jury to determine whether, by the ordinary processes of manufacture, the article had been advanced, in the meaning as understood in trade and commerce, outside of and beyond the group of articles included in paragraph 350; and their verdict, on such evidence as there is here, I should not disturb, whatever it might be. Under these circumstances, I shall not disturb the finding of the board of general appraisers. Decision affirmed.

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COMBS *et al.* v. ERHARDT.

(Circuit Court, S. D. New York. November 24, 1891.)

CUSTOMS DUTIES—ACT OF MARCH 3, 1883—METALLIC BEDSTEADS.

Certain bedstead mounts, brass and iron castings, bedstead tubes, bedstead knobs, vases, castors, etc., for use in the manufacture of metallic bedsteads, held not dutiable as "house and cabinet furniture in piece or rough, and not finished," at 30 per cent. *ad val.*, under Schedule D, par. 229, Act March 3, 1883, but at 45 per cent. *ad val.*, as "manufactures of metal," under Schedule C, par. 216, of said act.

At Law.

The plaintiffs, Henry W. Combs & Co., in July, 1890, imported into the port of New York certain brass and iron castings, iron tubes, brass knobs, castors, etc., for use in the manufacture of metal bedsteads. The defendant, collector of customs at the port of New York, levied and assessed a duty of 45 per cent. *ad valorem* upon the importation as "manufactures of metal," under paragraph 216, Schedule C, of the tariff act of March 3, 1883. The plaintiffs protested, claiming that the merchandise was dutiable as "house and cabinet furniture in piece or rough, and not finished," at the rate of 30 per cent. *ad valorem*, under paragraph 229 of Schedule D of the same act. The articles in suit were manufactured at Birmingham, England. They were not made in the same factories in Birmingham where metal bedsteads or metal furniture of any kind were manufactured. The manufacture of such articles as those in suit is in England a separate trade from the furniture. They did not constitute, on their arrival, all the completed parts of metallic bedsteads, and were not then in a condition to be put together, without further manipulation, to form completed metal bedsteads. At the close of the testimony the United States attorney, in behalf of the defendant, moved for a direction of a verdict in his favor, on the grounds (1) that the articles in suit, in the condition in which they were imported, were not "furniture" in any proper or correct sense of the term, and were not, therefore, covered by paragraph 229 of Schedule D; and (2) that the articles in suit, being manufactured entirely of brass, iron, or other metal, were not covered by the furniture paragraph, (229,) which relates only and exclusively to furniture made of wood, or of which wood is the component material of chief value.

*Hoffman Miller*, for plaintiffs.