

to be allowed to be enforced by the complainant until compliance with the statute of the state, so far as this court has jurisdiction of the matter, and out of consideration for the supposed policy of the state, it will not lend its aid to their enforcement. But I perceive no equity in refusing to the complainant the right to appear in a federal court to assert, not its own rights, but the rights of bondholders to foreclose the security and for sale of the mortgaged property, because it has rendered itself liable to the state of Illinois in a penalty for accepting a trust without first depositing security. I perceive no equity in visiting punishment upon the innocent to satisfy the violated dignity of the state. The bondholders have infringed no law of the state, and are not accountable for the sin of the Farmers' Loan & Trust Company, if it has violated the law. I do not believe in the doctrine of imputed sin in matters of property. The state of Illinois is able to punish offenders against its law in its own way, and in its own courts. It is not the duty of the federal courts to enforce the penal laws of the state. The difficulty with the position of the attorney general is that the state of Illinois has no property interest in the subject-matter of this litigation. The right of intervention is bottomed upon interest in the subject-matter of the controversy. Here the only interest of the state rests in desire to enforce the statute, and to secure obedience to its law, by preventing the enforcement of private contracts by one violating its law. That is not ground for intervention in equity. A decree will be entered overruling the pleas, and that the intervening petitions of Louis Daenell and of the attorney general of the state of Illinois be filed, docketed, and dismissed for want of equity.

CORNELL UNIVERSITY v. VILLAGE OF MAUMEE.

(Circuit Court, N. D. Ohio, W. D. May 27, 1895.)

No. 1,168.

MUNICIPAL CORPORATIONS—MISNOMER—BONDS.

Bonds duly and lawfully issued by a municipal corporation cannot be rendered invalid in the hands of a bona fide holder by the fact that such corporation, though properly a city, has issued such bonds under the name of a village, it having previously been recognized as a village in an act of the legislature changing its name, and having levied and collected taxes, passed ordinances, and otherwise acted as a village.

This was an action by Cornell University against the village of Maumee, Ohio, upon coupons cut from bonds of the village. The case was tried by the court without a jury.

Harris & Thurston and Doyle, Scott & Lewis, for plaintiff.
J. E. Pilliad, L. M. Murphy, and W. H. A. Read, for defendant.

RICKS, District Judge. The village of Maumee, in Lucas county, Ohio, in the year 1888 issued \$25,000 of refunding bonds under the

provisions of section 2701 of the Revised Statutes of Ohio, which provides:

"The trustees or council of any municipal corporation, for the purpose of extending the time for the payment of any indebtedness, which, from its limits of taxation, such corporation is unable to pay at maturity, shall have power to issue bonds of such corporation, or borrow money, so as to change but not increase the indebtedness, in such amounts, and for such length of time, and at such rate of interest as the council may deem proper, not to exceed the rate of eight per centum per annum."

Section 2703 provides that:

"All bonds issued under authority of this chapter shall express upon their face the purpose for which they were issued, and under what ordinance."

Section 2706 provides that:

"All bonds, notes or certificates of indebtedness issued by municipal corporations shall be signed by the mayor and by the auditor, comptroller or the clerk thereof, and be sealed with the seal of the corporation."

The bonds so issued passed to the plaintiff as a bona fide holder and innocent purchaser for value. The suit is brought upon the coupons, and in order to determine the validity of the bonds issued. The defense interposed is substantially that no such municipal corporation as the village of Maumee ever existed; that for years prior to this Maumee City was created a city, and continued to be such until the adoption of the new constitution, when, under the legislation as to municipal corporations, it was placed in the second grade of cities as a city of the second class. It appears from the several acts of the legislature, beginning with 1838, that the incorporation sued was known as Maumee City, in the county of Lucas, and subsequently known as the city of South Toledo. In 72 Ohio Laws, 252, the general assembly passed the following act:

"An act to change the name of Maumee City, Lucas county. Section 1. Be it enacted by the general assembly of the state of Ohio, that Maumee City, Lucas county, shall hereafter be designated and known by the name of South Toledo. Sec. 2. This act shall take effect and be in force from and after its passage."

On March 4, 1887 (84 Ohio Laws, 309), the general assembly passed the following act:

"An act to change the name of the incorporated village of South Toledo. Section 1. Be it enacted by the general assembly of the state of Ohio, that the name of the incorporated village of South Toledo, Lucas county, Ohio, be and the same is hereby changed to Maumee, provided, that such change shall in no wise affect the rights or liabilities of such village. Sec. 2. This act shall take effect and be in force from and after its passage."

Whatever may have been the facts concerning the name by which the territory was known as a corporation, the people within the territorial boundaries of that corporation remained the same. Section 1571a of the Revised Statutes of Ohio (Smith & B. Ed., p. 403) provides that:

"No error, irregularity or defect in any proceeding for the creation of a municipal corporation shall render it invalid if the territory sought to be incorporated has been recognized as such corporation and any tax levied upon it as such has been paid, or it has been subjected to the authority of the council without objection from its inhabitants."

The legislature has called this incorporation a village in the act authorizing a change of name; the supreme court has called it a village. It bought a corporate seal as a village; it issued bonds as a village; it levied and collected taxes as a village; it passed ordinances by its village council without objection; it is the same municipality, and includes within its boundaries the same people who received the money as the proceeds of the sale of these bonds. It would be grossly inequitable, and a clear violation of all legal principles, to permit these people now to escape the payment of this honest debt because of this alleged defect in its proper corporate name.

The bonds are executed by the mayor and village clerk, and the seal of the village is attached to them. They refer to the ordinance of the village council under which they were issued, and state the purpose of their issue in the following recitals:

"This bond is one of a series of bonds of like date and tenor, issued for the purpose of procuring the necessary means to refund and extend the time of payment of certain outstanding indebtedness, which is now due, and from its limits of taxation said village is unable to pay at maturity. This bond is issued and executed under and by authority of and in accordance with chapter 2, § 2701 of the Revised Statutes of the state of Ohio, and all other laws on the subject. Also by virtue of an ordinance passed by the village council August 16th, 1888. And it is hereby certified and recited that all acts, conditions, and things required to be done, precedent to and in the issuing of said bonds, have been properly done, happened, and performed in regular and due form, as required by law."

The ordinance of the village council passed August 16, 1888, referred to in the bond, provides substantially as follows: Section 1: "That for the purpose of extending the time of payment of so much of its existing indebtedness now due and soon to become due as said village is unable, from its limits of taxation, to pay at maturity, there be issued the bonds of said village in the sum of \$25,000, as hereinafter provided." Section 2 describes the bonds, and the form of their execution. Section 3 authorizes and directs the mayor and clerk of the village, as soon as practicable, to prepare and execute said bonds; and provides that the proceeds thereof, when the bonds shall have been disposed of according to law, "shall be used and applied, under the direction of the council, for the sole purpose of paying for and removing and extending said maturing and matured indebtedness of said village." By the certificate of the village clerk of Maumee, dated September 1, 1888, it appears that the total indebtedness of Maumee at that time was \$40,000. There is no defect claimed in the advertisement, or the proceedings authorizing the issuance of these bonds, and no claim that they sold for less than par. There was a general statute authorizing the village to issue the bonds. It is therefore a case where the power of the municipality to create the indebtedness is indisputable. The village council had a right to make the recitals stated in the bonds, and there is now no right to contradict them.

In the case of *State v. Village of Perrysburg*, 14 Ohio St. 487, which seems to me conclusive of this case, the supreme court say:

"Again, it is urged in behalf of the defendant that these bonds were issued in the name of the 'town' of Perrysburg,—the name of the corporation prior to the taking effect of the general act for the organization of cities and incorporated villages,—instead of in the name of 'the incorporated village of Perrysburg,' which, under the operation of that act, was its true legal designation at the time the vote was taken, the subscription of stock made, and the bonds were issued. But this was a mere misnomer, and amounts to nothing. See *Turnpike Co. v. Brush*, 10 Ohio 111, and *Ang. & A. Corp.* § 99."

The legislative recognition of a county illegally and fraudulently organized gives validity to its acts and dealings with third persons. *Commissioners v. Rose*, 140 U. S. 71, 11 Sup. Ct. 710. The question of corporate existence cannot be raised in a private litigation by the body assuming to be a corporation, to the prejudice of rights acquired as against such assumed corporation while corporate powers were being assumed and exercised. *Ashley v. Board*, 8 C. C. A. 455, 60 Fed. 55. In that case the circuit court of appeals held that the question of the legal existence of the county could not be raised in a private litigation, as appears from the language of the first paragraph of the syllabus. The court say:

"But it is needless to multiply authorities. They are substantially, if not altogether, agreed upon the proposition that when a municipal body has assumed, under color of authority, and exercised for any considerable period of time, with the consent of the state, the powers of a public corporation of the kind recognized by the organic law, neither the corporation nor any private party can, in private litigation, question the legality of its existence."

I conclude, therefore, that, the legal authority or power having been conferred upon this municipality by the General Laws of Ohio to issue such bonds, the conditions prescribed by the statute upon which such bonds were issued having existed as recited on the face of the bonds, said municipality is bound by the acts and representations of its council and other officials as against a bona fide holder,—which the plaintiff has shown itself to be,—and therefore that a judgment should be entered for the amount claimed in the petition.

SHAW, Collector, v. PRIOR et al.

(Circuit Court, D. Maryland. May 8, 1895.)

1. CUSTOMS DUTIES—SUFFICIENCY OF PROTEST.

P. & Co. imported a quantity of moss, which was classified by the collector as dyed moss, dutiable, under section 4 of the tariff act of October 1, 1890, at 20 per cent., as an unenumerated manufactured article. P. & Co. filed a protest, claiming that the moss should be subject either to a duty of 10 per cent., under paragraph 24 of the act, or free, under paragraph 653, as they were unable to detect that the moss had undergone any process of manufacture. *Held*, that if the moss was free, either under paragraph 653 or paragraph 560, the protest was sufficiently definite and precise.

2. SAME—MOSSES—PARAGRAPHS 24 AND 560, TARIFF ACT OF 1890.

It seems that paragraphs 24 and 560 of the tariff act of 1890 cover only such articles as are drugs, and that mosses, which are not used as drugs, and are crude and unmanufactured, are properly classified under paragraph 653 of the act. In *re Kraft*, 53 Fed. 1016, doubted.

This was an application by Frank T. Shaw, the collector of customs at Baltimore, for a review of the decision of the board of general appraisers reversing the decision of the collector as to the rate of duty on certain merchandise imported by E. A. Prior & Co.

Wm. L. Marbury, U. S. Dist. Atty., for appellant.

MORRIS, District Judge. The duty on this importation was assessed by the collector at 20 per cent., as a dyed moss, and classified under section 4, as an unenumerated manufactured article. The importers protested, and appealed to the board of United States general appraisers at New York. By the testimony before the general appraisers, it was shown that it was not a manufactured article, but a natural, dried moss; and, although part of the substance had a vivid green color, the testimony proved that it was not in any way artificially colored. The decision of the board of appraisers was as follows (opinion by Sharretts, G. A.):

"The merchandise covered by this protest is natural, dried moss. This substance is of a vivid green color, and was classified by the collector as an unenumerated manufactured article, in accordance with General Appraisers, 1352, covering dyed moss. The appellants claim that said merchandise is entitled to free entry under paragraph 653, Free List. The dyed moss considered in General Appraisers, 1352, was of a dark green color in every part thereof, while the stems and fibrous roots of the moss now under consideration are not artificially colored, and are dark brown or dark gray in color. The board submitted the official sample of the merchandise to the chemist in charge of the laboratory of the appraiser's department in New York for analysis. From the result of said analysis, and on the exhibits, consideration also being given to the testimony taken in *Birge, Donovan & Co. v. Collector at Philadelphia, General Appraisers, 2109*, we make the following findings of fact, viz.: (1) That the merchandise is crude moss, not colored or dyed, or otherwise manufactured. (2) That said moss is not a drug. On these facts, we think the merchandise is entitled to free entry, under paragraph 653, as claimed by the appellants. In reaching this conclusion, we are not unmindful of the point suggested to the effect that if dyed moss is dutiable at 10 per cent. under paragraph 24, as decided by the circuit court at New York, then moss not edible, and not advanced in value or condition by refining or grinding or other process of manufacture, would seem to fall for classification under paragraph 560, and not under paragraph 653, in which case this protest would have to be overruled, on the ground that the appellants had claimed relief under the wrong paragraph. We are of opinion, however, for the reason set forth at some length in General Appraisers, 2109, that paragraph 560, as well as paragraph 24, applies exclusively to drugs; and, inasmuch as the moss in question is not a drug, we hold the same is denominatively provided for in paragraph 653. The protest is accordingly sustained, and the collector's decision is reversed."

It is now conceded that the original classification by the collector was wrong, and that it is a natural, unmanufactured article, entitled to be admitted free; but it is contended that the importer was in error in his protest filed August 30, 1892, in which he claims that it should be subject either to a duty of 10 per cent., under paragraph 24, or free, under paragraph 653; it being contended that by a ruling of the circuit court for the Southern district of New York, rendered January 23, 1893, the article was free, under paragraph 560, and not under paragraph 653, cited in the importer's protest. The paragraphs under the act of October 1, 1890, are as follows:

"24. Drugs, such as barks, beans, berries, balsams, buds, bulbs and bulbous roots, and excrescences, such as nutgalls, fruits, flowers, dried fibers, grains, gums and gum resins, herbs, leaves, lichens, mosses, nuts, roots and stems, spices, vegetables, seeds (aromatic, not garden seeds), and seeds of morbid growth, weeds, woods used expressly for dyeing, and dried insects, any of the foregoing which are not edible, but which have been advanced in value or condition by refining or grinding, or by other process of manufacture, and not specially provided for in this act, ten per centum ad valorem."

"560 (Free List). Drugs, such as barks, beans, berries, balsams, buds, bulbs and bulbous roots, excrescences, such as nutgalls, fruits, flowers, dried fibers and dried insects, grains, gums and gum resins, herbs, leaves, lichens, mosses, nuts, roots and stems, spices, vegetables, seeds aromatic, and seeds of morbid growth, weeds and woods used expressly for dyeing; any of the foregoing which are not edible and are in a crude state, and not advanced in value or condition by refining or grinding, or by other process of manufacture, and not specially provided for in this act."

"653 (Free List). Moss, sea weeds and vegetable substances, crude or unmanufactured, not otherwise specially provided for in this act."

It is provided by section 14 of the act of June 10, 1890, in the same language used in section 2931 of the Revised Statutes, that the protest shall be in writing, and that the importer shall set forth therein "distinctly and specifically the grounds of his objection thereto." This has been held not to require technical precision, and that the protest "is sufficient if it shows fairly that the objection afterwards made at the trial was in the mind of the party, and was brought to the knowledge of the collector, so as to secure to the government the practical advantage which the statute was designed to secure." *Arthur v. Morgan*, 112 U. S. 495-501, 5 Sup. Ct. 241. The ruling by Judge Curtis, which was approved by the supreme court, is that it was sufficient to notify the collector of the true nature and character of the objection, to the end that he might ascertain the precise facts, and have an opportunity to correct the mistake and cure the defect, if it was one which could be obviated. It is further held that there were two objects to be secured by the requirement of the act of congress: (1) To apprise the collector of the objections urged by the importer before it should be too late to remove them, if capable of being removed; (2) to hold the importer to the objections he then contemplated, on which he really acted, and prevent him, or others in his behalf, from seeking out defects after the business should be closed. The cases in which these rulings were made are all cited and approved in *Herrman v. Robertson*, 152 U. S. 521, 14 Sup. Ct. 686.

The protest in the present case states that the importer objected to the duties assessed, "claiming that the same should be subject either to a duty of 10 per cent., under paragraph 24, or free, under paragraph 653, as we are unable to detect that the moss has undergone any process of manufacture." This protest brought specifically to the attention of the collector the real ground of the objection, viz. that the moss was a crude, unmanufactured article, and had not been advanced in value by any process of manufacture. This was the ground of the objection, as understood by the collector, as appears from the report made by the appraiser at Baltimore to the collector, in which he states that the importers

claim that the merchandise should be free, or subject to the duty of 10 per cent. ad valorem, and reports "that the goods in question, dyed moss, a sample of which is inclosed, are similar in character to the merchandise described in decision No. 12,703, made by the Hon. board of general appraisers, April 6, 1892. In that case the ruling was that the proper classification fell under section 4, at the rate of 20 per cent. ad valorem." The ruling of the board of general appraisers of April 6, 1892, referred to in the above report (In re Kraft, General Appraisers, 1352), had reference to moss which had been dyed. The board of appraisers held that the dyeing constituted a process of manufacture, and that dyed moss was to be classed as a manufactured article not specially enumerated or provided for, and was dutiable under section 4, at 20 per cent., and was not to be classed as one of the articles enumerated in paragraph 24, as was claimed by the importer, and dutiable only at 10 per cent. ad valorem. In the present case, on the appeal to the board of general appraisers, the only question considered was the sole one raised by the protest, viz. was the moss dyed, or in its natural state? If it was a natural moss, crude and unmanufactured, it was on the free list, and it made no difference in the consideration of the case whether it was properly to be classed under paragraph 560 or paragraph 653 of the free list of the tariff of 1890.

In my opinion, the protest meets all the requirements which have been held to be essential in such a document. To hold otherwise would be to require a technical precision, not only not customary in documents of a like nature, but not required in any practical affairs. The protest stated the real objection. It raised the real question of fact on which the classification depended. The collector understood precisely what the objection was, and what the question of fact was. He referred that question of fact to the local appraiser, who examined the goods, and decided the issue against the importers. Before the board of general appraisers the same question of fact was the only issue, and they had it investigated by the government expert, and on his report they decided in favor of the importers. I hold that the protest ought to be held sufficient, no matter whether the imported article is exempt from duty under paragraph 560 or paragraph 653.

But the general appraisers held that, if the article was to be classified under paragraph 560, then the protest was insufficient, because the importer had cited paragraph 653, and the correctness of their ruling in this respect has been raised by this appeal. In the case of *In re Kraft*, 53 Fed. 1016, it was held in the circuit court for the Southern district of New York that it did not appear from the wording of paragraph 24—and consequently of paragraph 560, which is in similar terms—that those paragraphs were intended to apply only to such articles as are drugs. When this question came up again before the general appraisers, additional testimony was adduced, which has been transmitted with this appeal, which tends to prove that all the articles enumerated in these paragraphs are in some of their forms known to trade and commerce as drugs, so that

to the inference to be drawn from placing paragraph 24 in the act under "Schedule A, chemicals, oils and paints," and the fact that paragraph 24 is susceptible of the construction that only drugs are intended to be enumerated therein, there is now added the fact proven that all the articles enumerated therein are in some of their forms known as drugs. It seems to me, therefore, reasonable to conclude that paragraphs 24 and 560 cover only such mosses as are used as drugs, and that paragraph 653 covers mosses which are not used as drugs, and are crude and unmanufactured. The decision of the board of general appraisers is affirmed.

HENDRICKS, Collector, v. SCHMIDT et al.

(Circuit Court of Appeals, Second Circuit. March 18, 1895.)

No. 40.

1. CUSTOMS DUTIES—LIEN FOR PAYMENT.

In respect to a single consignment of goods covered by a single entry, the lien of the government for payment of the whole duties attaches to each and every part thereof; and where the whole consignment is warehoused under bond, and parts of it are fraudulently withdrawn without payment of duties, the collector is entitled to hold the remainder until the duties on the entire consignment are paid, and is not bound to surrender the same upon tender of the amount of duties payable upon that part alone.

2. SAME—PAYMENT OF DUTIES.

To constitute a payment of duties upon any particular consignment of goods, there must be an intent, both on the part of the importers and of the collector, to apply the money to that consignment. *Held*, therefore, that where a check was given by the importers to an employé with directions to pay the duties upon a particular consignment, but he absconded with the same, and it afterwards came into the hands of the collector, and was applied by him to the payment of duties upon a different importation, this was not a payment of the duties upon the former consignment.

In Error to the Circuit Court of the United States for the Southern District of New York.

This was an action at law by the plaintiffs, trading under the firm name of Charles F. Schmidt & Peters, to recover of the collector of customs of the port of New York the possession of 11 cases of champagne imported December 19, 1892, by the steamship *La Champagne*, subject to the payment of certain duties, with the collection of which defendant was by law charged.

The complaint alleged a tender of the duty upon such champagne to the amount of \$95.92, a refusal on the part of the defendant to accept the tender, to deliver the goods, or to execute any documents whereby plaintiffs might in due course become possessed of such goods, and a conversion of the property to his own use.

Upon trial before a jury, the court directed a verdict in favor of the plaintiffs in the sum of \$352, being the value of the champagne, with interest, upon which verdict judgment was subsequently entered, and defendant sued out this writ of error.

C. D. Baker, Asst. U. S. Atty., for plaintiff in error.

Benno Lewinson, for defendants in error.