ALLINGTON & CURTIS MANUF'G CO. et al. v. GLOBE CO.

(Circuit Court, S. D. Ohio, W. D. April 6, 1896.)

No. 4,490.

PRACTICE—TAKING DEPOSITIONS IN PATENT CASES—EXTENSION OF TIME.

On defendant's motion for further extension of time for taking testimony, it appeared that complainant's counsel, resident in Hartford, Conn., was in attendance at Cincinnati from February 28th to March 14th, to be present at the taking of defendant's evidence, but that defendant took no evidence except on the first two and last five of those days; four of the latter days being occupied by an expert in answering a single question, without assistance from counsel. *Held*, that defendant was not entitled to an extension of time for taking additional expert testimony.

Offield, Towle & Linthicum and Albert H. Walker, for complainants.

Parkinson & Parkinson, for respondent.

SAGE, District Judge. The defendant's motion for further extension of time to take testimony is overruled. It appears that counsel for the complainants, whose residence is at Hartford, Conn., was in attendance at Cincinnati all the time from the morning of February 28 to the evening of March 14, 1896, to be present at the taking of defendant's evidence, but that the defendant took no evidence except on the first two and the last five of those days, although his counsel was in his office during the seven intervening business days. The only testimony taken during the second week in March was the deposition of one of defendant's experts, who occupied four days of that time in answering one question, without any assistance from counsel for defendant. The proposition now is to open up the testimony, to allow the taking of the deposition of another expert with reference to the operation of the Stratton steam separator when experimentally used as a dust collector. I see no reason why counsel for the defense cannot, if they so desire, procure from the expert, for their own use, his views on that subject, and then incorporate the substance of them in their brief or in their oral arguments. Such testimony is, after all, argumentative, and in most cases would be quite as effective if presented to the court as a part of the arguments of counsel. It is forcible in proportion as it appeals to the judgment and conviction of the court, rather than on account of its being under oath. Or, as suggested by Judge Taft, when a similar application was made to him, the steam separator might be operated in open court on the hearing in the experimental way desired. The showing made is not sufficient to justify the extension requested. The application is refused.

RATHBONE v. BOARD OF COM'RS OF KIOWA COUNTY.

(Circuit Court, D. Kansas, Second Division. March 19, 1896.)

No. 467.

1. COUNTY RAILWAY-AID BONDS—VALIDITY—VOTING—EXCESSIVE AMOUNT.
   The voting for an issue of bonds in excess of the amount allowed by the statute does not invalidate the vote, and bonds may be issued thereunder up to the lawful limit; but where, at the same election, bonds are voted for two railroads, in amounts which, taken singly, are in excess of the limit, and the subscription is first made by the county commissioners to one of the roads for the full amount voted for it, a subsequent subscription to the other is entirely void. Chicago, K. & W. R. Co. v. Commissioners of Osage Co., 16 Pac. 828, 38 Kan. 597, followed and applied.

2. SAME—INNOCENT PURCHASERS—NOTICE—RECITALS.
   Every dealer in municipal bonds, which upon their face refer to the statute under which they were issued, is bound to take notice of the statute and all its requirements; and if there is want of power to issue the bonds, they are void in the hands of innocent purchasers, regardless of other recitals contained therein.

3. SAME—CONSTRUCTION OF STATUTES.
   Whenever the power to issue bonds is called in question, the authority must be clearly shown, and will not be deduced from uncertain inferences. It can only be conferred by language which leaves no reasonable doubt of an intention to grant it. Brenham v. Bank, 12 Sup. Ct. 559, 144 U. S. 173, and Ashuelot Nat. Bank of Keene v. School Dist. No. 7, Valley Co., 5 C. C. A. 468, 56 Fed. 197, followed.

4. SAME.
   In a general law providing for the organization of new counties, a proviso that "no bonds of any kind shall be issued by any county, township, or school district, within one year after the organization of such new county" (Act Kan. Feb. 18, 1886), prohibits, not only the issuance of the bonds within the year, but also the taking of any of the prescribed preliminary steps, such as the voting by the people of authority to issue them. Coffin v. Commissioners of Kearney Co., 6 C. C. A. 288, 57 Fed. 137, applied.

5. SAME—CONSTITUTIONAL LAW—GENERAL AND SPECIAL ACTS.
   The constitution of Kansas declares that "all laws, of a general nature, shall have a uniform operation throughout the state, and in all cases where a general law can be made applicable, no special law shall be enacted." The general law of February 18, 1886, providing for the organization of new counties, contained these two provisos: "Provided, that none of the provisions of this act shall prevent or prohibit the county of Kiowa * * * from voting bonds, at any time, after the organization of said county; and provided, further, that no bonds of any kind shall be issued by any county * * * within one year after the organization of such new county." *Held*, that the proper construction of these provisos was that no new counties, except Kiowa, could either vote or issue bonds during the first year, but that Kiowa county might vote bonds within the year; that the effect of the proviso in favor of Kiowa county was to prevent a general law from having a uniform operation, and that proviso was therefore void. Darling v. Rodgers, 7 Kan. 598, and Robinson v. Perry, 17 Kan. 248, applied.

6. SAME—INNOCENT PURCHASERS—RECITALS.
   Dealers in municipal bonds are bound to know the law; and a county is not estopped by a recital in the bonds that the vote and subscription were had "in pursuance" of a certain statute, when, under its true construction, such statute was not applicable to the county, at the time the vote was taken, because it had been organized for less than a year. Dixon Co. v. Field, 4 Sup. Ct. 315, 111 U. S. 92, National Bank of Commerce v. Town of Granada, 4 C. C. A. 212, 54 Fed. 100, and Coffin v. Commissioners of Kearney Co., 6 C. C. A. 288, 57 Fed. 137, applied.