

merit. We may well refer in this connection to the opinion of Judge Wales, in behalf of the circuit court of appeals for the Third circuit, in *Philadelphia Trust, Safe-Deposit & Insurance Co. v. Edison Electric Light Co. of New York*, 13 C. C. A. 40, 65 Fed. 551, 552. The general interests of litigation require that applications for rehearings based on alleged anticipatory publications, which may well be presumed to be accessible to a search if sufficiently diligent, should not be made the basis of new proceedings unless strict rules are satisfied. As there is no limit to the amount of published material, there would otherwise be no end to the number of applications of this character which might be made, one after another. The question of laches involves in this case too many elements not considered by us on the appeal, and too many matters not appearing of record in this court, to require attention from us; and therefore it is remitted to the circuit court. We determine only that the petitioners may have permission to apply to the court below for leave to file their bill stated in the petition, first striking from it all alleged newly-discovered evidence except that which relates to the Wood device.

Ordered, that the petitioners present within one week the draft of an order conforming to the opinion passed down this day, giving reasonable notice thereof to the respondent.

A decree pursuant to this opinion was entered April 30, 1896, and reads as follows:

"The petition of the Gamewell Fire-Alarm Telegraph Company et al. for permission to present to the United States circuit court for the district of Massachusetts a petition for leave to file supplemental bill in the nature of a bill of review, having come on to be heard, now, after hearing Richard N. Dyer, Esq., on behalf of the petition, and Odin B. Roberts, Esq., in opposition thereto, it is ordered that permission be, and the same is hereby, granted to petitioners to present to the said United States circuit court for the district of Massachusetts, within ten days after the entry of this order, the annexed proposed supplemental bill in the nature of a bill of review, and to apply for leave of said circuit court to file the same, and proceed thereunder.

"By the Court.

John G. Stetson, Clerk."

The proposed supplemental bill annexed to the decree was based entirely on the alleged prior use of the "Wood Device."

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STATE OF MINNESOTA v. GUARANTY TRUST & SAFE-DEPOSIT CO.  
et al.

(Circuit Court, D. Minnesota, Fourth Division. May 6, 1896.)

1. JURISDICTION OF FEDERAL COURTS—STATE AS A PARTY.

A federal court has no jurisdiction, on the ground of citizenship, of a suit brought by a state against either its own citizens or citizens of other states.

2. OVERISSUES OF RAILROAD STOCK—MINNESOTA STATUTE—ACTION BY STATE.

The Minnesota statute prohibiting railroad companies from selling or disposing of any shares of stock until the same are fully paid, or issuing any stocks or bonds except for money, labor, or property actually received,

and declaring all fictitious stock or indebtedness void (Gen. St. 1894, § 2743), was enacted for the purpose of protecting stockholders and creditors against fictitious indebtedness, or watered stock, and gives the state no authority to protect such private rights by a suit in its own name.

This was a bill in equity by the state of Minnesota against the Guaranty Trust & Safe-Deposit Company, the Duluth & Winnipeg Railroad Company, the North Star Construction Company, the Safe-Deposit & Trust Company of Baltimore, and William C. Van Horne. The cause was heard on a motion by complainant for an injunction to restrain the sale of railroad property under foreclosure proceedings.

The bill of complaint alleges substantially as follows: That the Duluth & Winnipeg Railroad Company was organized in 1878 for the purpose of building and equipping a railroad from Duluth, Minn., to the northern boundary of the state. That between the years 1888 and 1892 the Duluth & Winnipeg Syndicate and the North Star Construction Company, its successor, built and equipped a hundred miles of that road on the following terms: That the syndicate, or its successor, was to obtain and pay for the right of way, construct, and equip the road, and for each mile so completed and equipped was to receive 100 shares, face value, \$10,000, of preferred stock; 150 shares, common stock, face value, \$15,000; and 20 bonds, face value, \$20,000; and might retain possession of and operate the railroad without being accountable for any of the net earnings. That the aggregate cost to the syndicate and construction company of said buildings and equipments did not exceed a million and a half dollars, but that there were issued in payment therefor, wrongfully and unlawfully, and in direct violation of the statute of Minnesota, to the North Star Construction Company, a million dollars, face value, preferred stock, a million and a half dollars, face value, of common stock, and two million dollars of mortgage bonds of the Duluth & Winnipeg Railroad Company, by the officers of the latter company. That in January, 1893, the stockholders of the construction company accepted a proposition, whereby one Van Horne, president of the Canadian Pacific Railroad Company, acquired the entire control, management, and operation of the construction company and the Duluth & Winnipeg Railroad, and continued to control and operate the same until the appointment of a receiver for the latter company. That said Van Horne caused to be appointed his own agents and servants as officers and directors of each of said companies, whereby the business affairs of those companies were so manipulated that the earnings of the Duluth & Winnipeg Railroad were reduced from over \$80,000 in 1893 to less than \$16,000 in 1894, thus seeking to wreck and ruin the railroad company, and bring about the sale of its property under the mortgage or trust deed. That under the control and direction of Van Horne, during the year 1892, bonds of the railroad company were issued to the amount of \$2,000,000, and that the same were issued without consideration or authority, and in fraud, of the people of the state of Minnesota. That on October 11, 1894, the Guaranty Safe-Deposit & Trust Company commenced an action against the Duluth & Winnipeg Railroad Company, the North Star Construction Company, and the Safe-Deposit & Trust Company of Baltimore to foreclose a mortgage or deed of trust for the \$2,000,000 worth of bonds against the railroad company; whereupon a receiver was appointed, and the railroad company filed its answer, admitting all the allegations of the bill of complaint, and consenting that complainant might have the relief prayed for in its bill. That on January 28, 1895, a decree was entered, by consent of the railroad company, for a sale of its property, that the Guaranty Trust & Safe-Deposit Company might bid at the sale, and in payment might surrender and deliver the bonds, notice whereof was duly published. That the suit brought by the Guaranty Trust & Safe-Deposit Company against the railroad company was baseless, collusive, and fraudulent. That the railroad company was not insolvent, but suit was commenced in furtherance of a design of Van Horne and his associates to reorganize the Duluth & Winnipeg Railroad Company, and

issue stock largely in excess of the actual cost of the railroad, in violation of the statute of Minnesota. And complainant avers that, unless restrained, said Van Horne and his associates will carry out said design, in fraud of the people, and in violation of the statute of Minnesota. The bill then sets up the following statute, among others (section 2743, Gen. St. Minn.), which, so far as material, provides: "That it shall not be lawful for any railroad company existing by virtue of any of the laws of this state, nor for any officer of any such company, to sell, dispose of, or pledge any shares in the capital stock of such company, until the shares so sold, disposed of, or pledged, and the shares for which such certificates are to be issued, shall have been fully paid, nor issue any stocks or bonds except for money, labor, or property, actually received and applied to the purpose for which such corporation was created, and all fictitious stock, dividends and other fictitious increase of the capital stock or indebtedness of any such corporation shall be void." An injunction is then asked that the defendants be restrained from executing and carrying out the agreement set up; that an accounting be had to determine the actual cost of said railroad, and the present owners of claims against the same; that the railroad properties be sold for the purpose of paying the amount actually expended in the construction thereof, and the purchasers be permitted to issue securities against the properties of the reorganized company to an amount equal to the actual cost of the road; that any valid and subsisting claims against the railroad company may be applied as part payment pro rata upon the purchase of the property; that the outstanding stock and bonds heretofore issued by the railroad company be declared null and void; that the sale be enjoined pending this litigation, and the agreement heretofore referred to, if executed, be declared null and void.

H. W. Childs, Atty. Gen., and Geo. B. Edgerton, Asst. Atty. Gen.,  
for the State of Minnesota.

Munn, Boyeson & Thygeson, for defendants.

NELSON, District Judge (after stating the facts). This motion is based upon a bill with accompanying affidavits, filed by the state of Minnesota, to enjoin and restrain a sale under a decree of foreclosure heretofore granted in the case of Guaranty Trust & Safe-Deposit Company against the Duluth & Winnipeg Railroad Company et al. No stockholder of the railroad company interposed any objection to the foreclosure. In my opinion, the motion must be denied, for the following reasons:

1. No federal question is involved. A state is not a citizen, and this court has no jurisdiction in a suit brought by a state against its own citizens or citizens of other states.

2. The state has no property rights in the original controversy.

3. The provisions of section 2743, Gen. St. Minn. 1894, relied upon by the attorney general, and which it is claimed give the state a standing in this court by a bill in equity to enforce the same, were enacted for the purpose of protecting stockholders and creditors against fictitious indebtedness, or "watered stock," so called; in other words, to protect private rights; and the state has no authority to protect such private rights by suit.

4. The bill is not ancillary or auxiliary to the main proceeding, but original, and some of its features are in the nature of a bill "quia timet"; that is, for the purpose of quieting apprehensions of probable or possible future violation of the statute.

5. Counsel is mistaken when he says that the state can secure relief, if entitled to any, nowhere else save in the original action,

and by this proceeding. The state, by informing bidders at the sale of what it intends to do, would not be cut off from proceeding against purchasers.

After such consideration as I have been able to give the matter in the limited time allowed, I am clearly of the opinion that the state has no standing in court under the proceedings instituted by it, and I decline to issue an injunction restraining the sale.

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WESSON v. SALINE COUNTY.

SOCIETY FOR SAVINGS v. SAME.

(Circuit Court of Appeals, Seventh Circuit. May 4, 1896.)

Nos. 163, 164.

1. WRIT OF ERROR—SPECIAL FINDINGS—RECORD.

A special finding of facts, like a general finding or verdict, is in itself a part of the record, and need not be embodied in a bill of exceptions; and it should not be accompanied by a general finding.

2. SAME.

The question for review upon a special finding, where a jury is waived in writing, is whether the facts found are sufficient to support the judgment (Rev. St. § 700); and the finding should be complete in itself, unaided by reference to bills of exceptions, though documents set out in the pleadings, or otherwise in the record, may be referred to without recopying.

3. SAME—STATEMENT OF SUM DUE.

In an action on bonds, a special finding should, by the better practice, state the amount due; but, if the data for computing it are given, the defect is not fatal.

4. MUNICIPAL BONDS—INNOCENT PURCHASERS—RECITALS.

Recitals in county bonds, that they are "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," and under the provisions of certain statutes, and that they are in part payment of "a subscription to the capital stock" of a named railroad company, estop the county, as against an innocent purchaser, from showing that the bonds are void, because in fact issued as a donation to the railroad company, whereas the statute only authorized a subscription to its stock. *City of Evansville v. Dennett*, 16 Sup. Ct. 613, followed. *Post v. Pulaski Co.*, 1 C. C. A. 405, 49 Fed. 628, overruled.

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

These were actions brought, respectively, by D. M. Wesson and by the Society for Savings against the county of Saline, Ill., to recover on certain county railroad aid bonds. In each case there was a judgment below for the defendant, and the plaintiff brought error.

James C. Connolly and Thos. C. Mather, for plaintiffs in error.

Samuel P. Wheeler, for defendant in error.

Before WOODS and JENKINS, Circuit Judges.

WOODS, Circuit Judge. The decision of these cases, which were heard at the June session, 1894, has been delayed to await the answer of the supreme court to questions certified in the cases of

Graves v. Saline Co., 16 Sup. Ct. 526, and City of Evansville v. Dennett, Id. 613. The action in each case is in assumpsit on bonds for \$500 each issued by the county of Saline, Ill., bearing date October 8, 1872, and payable to the Cairo & Vincennes Railroad Company, or bearer, in the city of New York, 20 years after date, with interest thereon from November 1, 1872, at the rate of eight per centum per annum, evidenced by coupons payable semiannually. Each bond is signed and attested by the county judge and clerk of the county court of Saline county, bears a certificate of registration by the auditor of public accounts for the state, and contains the following recitals:

"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 fifth day of October, A. D. 1867. This bond is also issued under the provisions of an act to incorporate the Cairo & Vincennes Railroad Company approved March 6, 1867, and under the provisions of an act to amend said act approved February 9, 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 16, 1869,' and is in part payment of the subscription to the capital stock of the Cairo & Vincennes Railroad Company, in the total sum of one hundred thousand dollars (\$100,000.00)."

Issue was joined by a plea of nonassumpsit, and upon written waiver of a jury the cases were submitted for trial to the court, which, besides a general finding for the defendant, made in each case a special finding of facts, which, needlessly, is embodied in a bill of exceptions. A special finding, like a general finding or verdict, is in itself a part of the record. It ought not to be accompanied with a general finding. *British Queen Min. Co. v. Baker Silver Min. Co.*, 139 U. S. 222, 11 Sup. Ct. 523. The question for review upon a special verdict or finding is whether the facts found are sufficient to support the judgment (Rev. St. § 700); and it is manifestly important, especially to the party having the burden of proof, that all the facts essential to the relief sought shall be explicitly and fully stated. The finding should be complete in itself, unaided by references to bills of exception, though documents set out in the pleadings, or otherwise in the record, may be referred to without recopying.

The special finding in each of these cases states "that the plaintiff is the owner and holder, and became such, before due, for value, in the usual course of his business, of the following bonds sued upon in this case, to wit." And there follows a description, by number, and by a copy of one bond and one coupon, in the first case, of bonds numbered from 1 to 26 inclusive, and in the second case of bonds numbered 31 to 100 inclusive. The amount due in each case is not stated, as by the better practice it ought to be; but, the data for computing the amount being given, the defect is not fatal. *Metcalf v. City of Watertown*, 34 U. S. App. 107, 16 C. C. A. 37, and 68 Fed. 859. It is also stated that the several acts of the legislature of Illinois mentioned in the recitals of the bonds were offered and admitted in evidence, and "that the following were the orders made,

and are all the proceedings taken by the county court of Saline county, with reference to the issuance of said bonds, as shown on the county court records." And a copy of the proceedings and orders is set out, from which it appears, but by recital only, that on the 5th day of October, 1867, the electors of Saline county, "by a legal majority, voted in favor of the proposition that Saline county subscribe one hundred thousand dollars to the capital stock of the Cairo & Vincennes Railroad, to be paid in bonds of said county"; that afterwards, on November 28, 1867, a contract was made between the county and the railroad company whereby it was agreed that the county would sell to the company, for \$5,000, to be paid in an equal amount of the bonds, the \$100,000 of stock to be issued in payment of the \$100,000 of bonds; and that afterwards, on October 8, 1872, after a recital of this agreement, it was ordered that bonds to the amount of \$95,000 be issued. Pursuant to the order bonds were issued, including those in suit.

Upon these facts the court held that the bonds were a donation to the company, and were illegal, because the statutes under which they were voted and issued authorized only a subscription to the stock of the railroad company, and not a donation. That view is in accord with the ruling of the supreme court of Illinois in *Choisser v. People*, 140 Ill. 21, 29 N. E. 546, followed by this court in *Post v. Pulaski Co.*, 1 C. C. A. 405, 49 Fed. 628, and 9 U. S. App. 1. See *Commissioners v. Beal*, 113 U. S. 227, 5 Sup. Ct. 433. But the proposition, enunciated in *Post v. Pulaski Co.*, that "the recital in the bonds, that they were issued pursuant to an order of the county court, put who-soever should come into possession of those bonds, even if purchased for value upon the open market, upon inquiry as to the terms of that order," is inconsistent with, and must be regarded as overruled by, the recent ruling of the supreme court in the case of *City of Evansville v. Dennett*, supra, where it was held that a recital that a subscription to the stock of a railroad company was "made in pursuance of an act of the legislature and ordinances of the city council passed in pursuance thereof" "imported not only compliance with the act of the legislature, but that the ordinances of the city council were in conformity with the statute." That is necessarily so, if the recitals in municipal bonds are not to be denied significance. The only reason for saying that a reference to an ordinance puts a party upon inquiry into the contents thereof is because the reference conveys knowledge of the existence of the ordinance. But common councils, boards of commissioners, and like municipal bodies can act only by order, ordinance, or resolution, as every one is bound to know; and, when a municipal bond is offered upon the market, it needs no mention in a recital to give a proposed purchaser notice that the bond was issued in pursuance of an order, or resolution, or ordinance. The existence of the bond implies that much, and when there is a recital to the effect that the bond was issued in pursuance of a statute, the necessary import is that there was an ordinance, and a proper one, whether express mention is made of it or not. To say "in pursuance of a statute and an ordinance" is equivalent to an express statement that the ordinance is in conformity with the statute, and the pur-

chaser of a bond containing that recital is not bound in that particular to look for further information.

The bonds here in question were put upon the market before the case of *Town of Eagle v. Kohn*, 84 Ill. 292, was decided, and under the decisions of the supreme court of the United States the rights of a good-faith purchaser are not left in doubt. The recitals are indisputable proof of the facts essential to the validity of the bonds. *Town of Coloma v. Eaves*, 92 U. S. 484; *Insurance Co. v. Bruce*, 105 U. S. 328; *Pana v. Bowler*, 107 U. S. 529, 2 Sup. Ct. 704; *Oregon v. Jennings*, 119 U. S. 74, 7 Sup. Ct. 124; *German Sav. Bank v. Franklin Co.*, 128 U. S. 526, 9 Sup. Ct. 159; *Citizens' Savings & Loan Ass'n v. Perry Co.*, 156 U. S. 692, 15 Sup. Ct. 547. If the facts were as the recitals show they were, there was complete authority of law for the execution of the bonds, and, as against an innocent purchaser, evidence that the facts were different must be rejected or disregarded. The judgment in each case is therefore reversed, and the cause remanded, with instructions to enter judgment upon the special finding for the plaintiff, with interest computed according to the rule laid down in *Metcalf v. City of Watertown*, supra.

Mr. Justice HARLAN sat at the hearing, but has not participated in the decision.

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GRAVES et al. v. SALINE COUNTY.

(Circuit Court of Appeals, Seventh Circuit. May 4, 1896.)

No. 173.

MUNICIPAL REFUNDING BONDS—VALIDITY—INSTRUCTIONS FROM SUPREME COURT.

The supreme court, having decided, in answer to questions certified by this court, that the county refunding bonds involved in this controversy were valid and binding obligations in the hands of innocent holders (16 Sup. Ct. 526), thereby disposing of all the questions involved in the case, this court accordingly reverses the decree below, enjoining the levy and collection of a tax to pay the bonds, and directs the dismissal of the bill.

Appeal from the Circuit Court of the United States for the Southern District of Illinois.

Geo. A. Sanders, T. C. Mather, and J. C. Mathis, for appellants.  
Samuel P. Wheeler, for appellee.

Before WOODS and JENKINS, Circuit Judges, and BUNN, District Judge.

PER CURIAM. This suit was in equity, brought in the circuit court of Saline county, Ill., by the county of Saline, against the treasurer and auditor of public accounts of the state of Illinois and the collector of taxes and clerk of the court of Saline county, to restrain the levy and collection of the tax required to be levied by such auditor of the public accounts for the state of Illinois, to pay the interest on 100 registered refunding bonds of that county. The appellant Luther L. Graves, as one of the holders of such refunding