

the son became of age, and assented to holding the stock. *Held* that, as the cause of action accrued at the time of the assessment, and the son was incapable of assenting at that time, the father became and remained liable for the amount of the assessment.

This was a suit by Edwin L. Foster against Homer C. Wilson and others to recover an assessment upon the shares of an insolvent national bank.

W. L. Burnap, for plaintiff.

W. P. Stafford, for defendants.

WHEELER, District Judge. This case, as to defendant Henry Chase, has been heard with, and is like, the one preceding (75 Fed. 797), except that the bank is the First National of Deming, N. M., and the minor here became of age, and assented to holding the stock, after the assessment was made, and before suit was brought. The cause of action accrued when the assessment was made, to which the defendant then became, and was, accordingly, liable. The ratification by the minor on becoming of age afterwards would not affect the cause of action that before had fully accrued against the defendant. Decree for plaintiff.

HOLDEN v. WILLIAMS, United States Marshal.

(District Court, D. Alaska. April 29, 1896.)

No. 474.

1. POWERS OF DEPUTY UNITED STATES MARSHALS IN ALASKA.

Deputy United States marshals appointed under the provisions of paragraph 3, § 6, Act May 17, 1884, providing a civil government for Alaska (23 Stat. 24; Supp. Rev. St. p. 430), have power to serve and execute process issued by the United States commissioners of said district, exercising the powers of justices' courts according to the statutes of Oregon.

2. LIABILITY OF MARSHAL.

The marshal of said district is liable for acts done by said deputies under color of office in executing or serving such processes.

This was an action in tort brought by E. S. Holden against L. L. Williams, United States marshal, to recover certain gold amalgam taken by the deputy marshal on execution issued by the commissioners' court at Juneau. Demurrer by defendant.

Bostwick & Crews, for plaintiff.

J. F. Maloney and John Trumbull, for defendant.

DELANEY, District Judge. The precise point raised on this demurrer is that under paragraph 3, § 6, Act May 17, 1884, providing a civil government for Alaska (23 Stat. 24; Supp. Rev. St. p. 430), the deputy marshals, in serving process issued by the commissioners exercising powers of justices' courts, act as constables, and not as deputy marshals, and that, therefore, the marshal is not liable for the acts of such deputies in serving or executing the process of said courts. The paragraph referred to reads as follows:

"He [the marshal] shall appoint four deputies, who shall reside severally at the towns of Sitka, Wrangel, Unalaska, and Juneau city, and they shall respectively be ex officio constables and executive officers of the commissioners' courts herein provided, and shall have the powers and discharge the duties of United States deputy marshals, and those of constables under the laws of the state of Oregon now in force."

It is not necessary to determine the liability of the marshal for the acts of his deputies done while exercising the powers of constables, as the record and the complaint in this case disclose that the officer making the levy acted as a deputy marshal, and not as a constable.

The laws of the state of Oregon in force on the 17th day of May, 1884, so far as they are applicable, and not in conflict with federal legislation, are made the law of this district by an act of congress of that date. It is perfectly evident from the general import of said act that congress thereby intended to create a local civil government and jurisprudence for Alaska; and, except as modified by that act itself or other federal legislation, congress established by that act a civil government and jurisprudence here, similar to those then in existence in the state of Oregon. A familiar rule of statutory construction is that courts will give effect to the intention of the legislature where such intention can be discerned. Sheriffs and deputy sheriffs in Oregon are the executive officers of the courts of that state, and are clothed with power to serve and execute all process of the courts therein. Hill's Code, §§ 993, 999. The marshal and his deputies here are the executive officers of the courts of this district, and it manifestly would defeat the intention of congress, in creating a jurisprudence here, to hold that, in addition to the powers conferred upon them by the general acts of congress, the marshal and his deputies did not take, by virtue of the organic act, the powers of sheriffs and their deputies under the laws of Oregon. Aside from this, the effect of the provisions of the organic act, in establishing said laws for the government of this district, is to make those laws federal legislation. It is the same, in effect, as if congress had incorporated bodily into the act of May 17, 1884, the laws then in force in the state of Oregon, and in that manner made them the laws governing this district. Instead of setting them out in full in the act, congress declares them to be the law of this territory, so far as they can be applied, and do not conflict with other legislation of congress. They thereby become the laws of the United States, or federal legislation. It will be noted that the paragraph of section 6 above referred to provides that the deputy marshals in this district shall have the powers and discharge the duties of United States deputy marshals, and those of constables under the laws of Oregon. The grant of the powers of constables is simply in addition to those of deputy marshals. Section 788, Rev. St. U. S., provides that "the marshals and their deputies shall have, in each state, the same powers, in executing the laws of the United States, as sheriffs and their deputies in such state may have, by law, in executing the laws thereof." The laws of Oregon in force May 17, 1884, having become, by virtue of the organic act, the laws of the United States, the marshal and his depu-

ties, in executing such laws in Alaska, are clothed by section 788, Rev. St., with all the powers possessed by sheriffs and deputy sheriffs of Oregon. It therefore follows that the marshal and his deputies may serve and execute any process of any court in this district.

The rule that the superior officer is liable for acts of his deputy done under color of his office is too well settled to need discussion. The demurrer is overruled.

BLAIR et al. v. CITY OF WACO.

(Circuit Court of Appeals, Fifth Circuit. June 9, 1896.)

No. 476.

MUNICIPAL CORPORATIONS—DELEGATION OF POWERS—SALE OF BONDS.

Where a charter commits to the city council, by name, the entire control of the city's finances, with power to issue and sell bonds, the council cannot delegate to the mayor authority to sell such bonds at his discretion as to price. Pardee, Circuit Judge, dissenting.

In Error to the Circuit Court of the United States for the Northern District of Texas.

This was an action at law by John I. Blair and others, constituting the firm of Blair & Co., against the city of Waco, Tex., to recover damages for the failure of the city to comply with a contract for the sale and delivery to plaintiffs of certain bonds of the city. The contract of sale was made in behalf of the city by the mayor, acting under alleged authority of a resolution of the city council which fixed no limitation as to the price to be received. The main question in the case was whether the city council had authority to thus delegate to the mayor such unrestricted power of sale. The provisions of the city charter cited for the defendant in error as bearing upon the question were as follows:

"Art. 4. The municipal government of the city shall consist of a city council, composed of the mayor and two aldermen from each ward, a majority of whom shall constitute a quorum for the transaction of business, except at called meetings for the imposition of taxes, when two-thirds of a full board shall be required, unless herein otherwise specified."

"Art. 122. The city council shall have the management and control of the finances and other property, real, personal and mixed, belonging to the corporation."

"Art. 169. And, in furtherance of these objects, they shall have power to borrow money, upon the credit of the city, and issue coupon bonds of the city therefor, in such sum or sums as they may deem expedient, to bear interest not exceeding 8 per cent. per annum, payable semiannually or annually, at such place as may be fixed by the city ordinance: provided, that the aggregate amount of bonds issued by the city council shall at no time exceed six per cent. of the value of the property within said city subject to ad valorem tax: and further provided, that no money arising from the sale of bonds shall ever be applied to the purchase of streets and alleys, either directly or indirectly, nor shall any money ever be borrowed for that purpose.

"Art. 170. All bonds shall specify for what purpose they are issued, and shall not be invalid if sold for less than their par value; and, when any bonds are issued by the city, a fund shall be provided to pay the interest, and create a sinking fund to redeem the bonds, which fund shall not be diverted nor drawn upon for any other purpose, and the city treasurer shall honor no draft on said fund except to pay interest upon or redeem the bonds for which it was provided; said bonds shall be signed by the mayor, and countersigned by the secretary, and payable at such place and at such time as may be fixed by ordinance of the city council, not more than thirty years."