to sell the bonds and stocks as they did; and such unauthorized sale would entitle Leahy to treat the sale to him as rescinded, and to recover back what he had paid on the purchase, with interest from the date of payment. Holland v. Rea, 48 Mich. 222–224, 12 N. W. 167; Pollen v. Le Roy, 30 N. Y. 549–557; Fancher v. Goodman, 29 Barb. 317; Rosenbaums v. Weeden, 18 Grat. 793; McClure v. Williams, 5 Sneed, 718; Redmond v. Smock, 28 Ind. 365; Benj. Sales (6th Am. Ed.) §§ 782–795.

But we see no reason to doubt that it was competent for the parties, by further agreement, to impress upon the bonds and stocks in question the character of a pledge, giving to Lobdell, Farwell & Co. a lien for the payment of any balance due them on their general account with Leahy. There is some evidence in the record tending to show that such an understanding was had between the parties. It was affirmed by the plaintiff and denied by the defendant. The determination of the fact is followed by important consequences. If no such an agreement was had, Leahy, as already stated, was in position to treat his contract of purchase as at an end, and to recover back the $2,500 which he had paid, with interest; and, if the facts were as just stated, the result would have been the same if no credit for a definite time had been given, but the price was subject to call, for the subsequent sale finally made by Lobdell, Farwell & Co. was not justified by any proper proceedings taken by them to that end. In such case they were bound to call for payment of the purchase price, and in case of his default notify the purchaser of their intention to sell the property for their indemnity. Benj. Sales, § 794, and pages 775 and 776, Bennett's note, where the American cases are numerously collected. This they did not do. They called on Leahy to furnish margins on general account, and notified him that if he did not comply they would sell the property upon the footing of a pledge for the whole balance due them. This was a demand and notice wholly unwarranted by such conditions, and furnished no basis whatever for the subsequent sale.

On the other hand, if the parties agreed that Lobdell, Farwell & Co. should hold the bonds and stocks as security for the balance of account upon their dealings with Leahy, as they held those which they had bought as brokers for him, this would constitute a pledge. If they should exercise the rights of a pledgee, they would necessarily waive any lien which might have inured to them as vendors in the sale to Leahy, which would be inconsistent with the pledge, and depend upon the latter's personal responsibility. But in such case there would be no rescission of the sale, and Lobdell, Farwell & Co. would hold the bonds and stocks as the property of Leahy, subject to the terms and conditions of the pledge. In that state of things, if they disposed of the property in an unauthorized way, they would be liable to the pledgor for its value in an action of trover, or the pledgor might waive the tort and recover the price for which the property was sold. The measure of damages would not be the contract price on the sale to Leahy, which would have become an indifferent matter in respect to such subsequent dealings.

Pursuing the subject further upon this latter alternative, there

can be no doubt that the court below correctly held that the sale to Deere on the 18th of August and the subsequent rescission of it were wholly inoperative to devest Leahy's title. And we are also of opinion that Lobdell, Farwell & Co., by reporting the pretended sale to Leahy, and thereby leading him to suppose that they had made an actual sale of his bonds and stocks, disentitled themselves to make the sales of them which they made in October and December following, without giving him notice of the facts, and of their intention to make those sales. He might then have been in condition, and preferred to redeem the pledge. By their conduct they had led him to suppose that his property was gone, and therefore that he had no occasion for concern about its further disposition. They had apparently exhausted the right to sell founded upon the notice they had given him. Upon any view of the case which can be taken, there can be no question that the sales by Lobdell, Farwell & Co. of Leahy's bonds and stocks in October and December were without right, and amounted to a conversion. The question is reduced to one of the measure of damages, and that depends upon the determination of the fact whether the parties supplemented the sale of the bonds and stocks of January 26, 1893, by the further agreement that they should stand pledged for the general balance of account, or whether the contract of sale remained unaffected by any such supplementary agreement. In the former case, this being an action of assumpsit upon a claim of set-off, the measure of damages would be the sum finally realized by Lobdell, Farwell & Co. upon the sales of the bonds and stocks in October and December, 1893, with interest. In the latter case, the vendor might treat the contract as rescinded, and the measure of damages would be the amount he had paid upon it, with interest. We think the rulings of the court below upon the law of the case were right, and that the results reached by the jury correctly represented the sums for which judgment upon the alternatives of the decisive question of fact should be rendered. But the difficulty is that the court did not submit to the jury the determination of the fact as requested, but assumed that the parties had agreed that the bonds and stocks should be regarded as pledged for the security of the balance of their general account. Upon the evidence, while that conclusion might be justified, there was room for a different conclusion. It was for the jury to determine the question. We think the court erred in not submitting the case to the jury upon this point, and for that reason the judgment must be reversed, and the case remanded, with directions to award a new trial.

DUDLEY v. BOARD OF COM'RS OF LAKE COUNTY, COLO.[1]

(Circuit Court of Appeals, Eighth Circuit. April 12, 1897.)

No. 821.

1. COUNTY BONDS—COUPONS—RIGHTS OF HOLDERS.
Where bona fide holders for value of county bonds transfer the coupons attached thereto by delivery and written assignment, the transferees are entitled to maintain action on the coupons, whether they have given any consideration for them or not.

2. SAME—ILLEGAL INCREASE OF INDEBTEDNESS—NOTICE TO PURCHASER.
Under the constitution and statutes of Colorado limiting the indebtedness which a county may incur by loan, where there is a neglect by county commissioners to make the prescribed semiannual statements of the financial condition of the county, and by the clerk of the board to keep a record thereof (Act March 24, 1877), the county will be estopped, as against a bona fide holder, by recitals in bonds declaring that the legal limit of indebtedness has not been exceeded.

3. SAME—CONST. COLO. ART. 11, § 6.
The restriction imposed by article 11, § 6, of the constitution of Colorado on the power of a county to incur indebtedness in any one year, by loan, in the absence of a vote by the qualified electors, does not apply where authority has been given by such a vote to incur a greater indebtedness. In that case the only limitation imposed is that the aggregate debt shall not be made to exceed twice the amount previously prescribed. Lake Co. v. Rollins, 9 Sup. Ct. 651, 130 U. S. 662, distinguished. Thayer, Circuit Judge, dissenting.

4. SAME—ESTOPPEL TO SET UP IRREGULARITY BY PAYMENT OF INTEREST.
When a county has paid interest on bonds for several years, it is estopped to set up a mere irregularity in their issue, as against bona fide holders for value, or their transferees.

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

This action was brought to recover the amount of a large number of coupons, aggregating $26,500, exclusive of interest, which had formed part of and been attached to bonds of said county of Lake, in the state of Colorado, which had been issued to the amount of $50,000 on or after September 6, 1880, but bearing date July 31, 1880, for the purpose of erecting necessary public buildings for said county. Said bonds bore interest at the rate of 10 per cent. per annum, payable annually on the 1st day of April of each year at the office of the county treasurer of said county, upon delivery of the attached interest coupons. The bonds were redeemable at the pleasure of the county after 10 years, and were due and payable at the office of the county treasurer 20 years from the date thereof. The coupons maturing upon these bonds before April 1, 1884, were all paid, as they matured, at the office of said county treasurer; but no coupons maturing at or after that date have been paid, the coupons sued on being among those unpaid. The answer of the defendant denied knowledge, or information sufficient to form a belief, as to whether plaintiff was the owner and holder of any of the coupons, or had become the purchaser of them for a valuable consideration, without notice of any claim affecting their validity. But the principal defense, variously stated in the answer, was, in substance, that under the constitution and laws of the state of Colorado the board of county commissioners of said county of Lake had not, when they issued said bonds, any power or lawful authority to issue the same, for the alleged reason that by the issue of such bonds a debt of said county was contracted, or the prior debt of said county increased, to an amount prohibited by the constitution of said state, and that, from the existing facts and circumstances shown by the records of said county, all purchasers of said bonds were bound to take notice of their invalidity. Section 6 of article 11 of the constitution of Colorado, as it stood prior to the year 1888, was as follows: "No county shall

[1] Rehearing denied June 7, 1897.

contract any debt by loan in any form, except for the purpose of erecting necessary public buildings, making or repairing public roads and bridges, and such indebtedness contracted in any one year shall not exceed the rates upon the taxable property in such county following, to wit: Counties in which the assessed valuation of taxable property shall exceed five millions of dollars, $1.50 on each thousand thereof; counties in which such valuation shall be less than five millions of dollars, $3.00 on each thousand dollars thereof. And the aggregate amount of indebtedness of any county for all purposes, exclusive of debts contracted before the adoption of this constitution, shall not at any time exceed twice the amount above herein limited, unless when, in manner provided by law, the question of incurring such debt shall, at a general election, be submitted to such of the qualified electors of such county as in the year last preceding such election shall have paid a tax upon property assessed to them in such county, and a majority of those voting thereon shall vote in favor of incurring the debt; but the bonds if any be issued therefor, shall not run less than ten years, and the aggregate amount of debt so contracted shall not exceed twice the rate upon the valuation last herein mentioned: provided, that this section shall not apply to counties having a valuation of less than one million of dollars." The said bonds contained a recital upon the face of each bond, as follows: "This bond is one of a series of fifty thousand dollars, which the board of county commissioners of said county have issued for the purpose of erecting necessary public buildings, by virtue of and in compliance with a vote of a majority of the qualified voters of said county at an election duly held on the 7th day of October, A. D. 1879, and under and by virtue of and in compliance with an act of the general assembly of the state of Colorado entitled 'An act concerning counties, county officers and county governments, and repealing laws on those subjects,' approved March 24th, A. D. 1877; and it is hereby certified that all the provisions of said act have been fully complied with by the proper officers in the issuing of this bond." Sections 20–25, inclusive, of said act, were also printed upon said bonds, and contained all the provisions of said act relative to the action of the board of county commissioners in determining upon the necessity of creating an indebtedness for the purpose of erecting necessary public buildings, making or repairing roads and bridges, and by order specifying the amount required, and submitting the question of incurring the debt to a vote of the qualified electors at a general election, by posting of notices; also, prescribing the form of ballots and manner of voting and canvassing the vote, and the authority of the county commissioners in case the vote should be carried to contract the indebtedness, and the limitations upon such authority, and the form and purport of the bonds to be issued, and provision to be made for the payment of the interest and principal of the bonds, and a provision that they should not be sold at a discount of more than 15 per cent. of their par value. Section 21 of said act contained a provision, as follows: "Provided, that the aggregate amount of indebtedness of any county exclusive of debts contracted prior to July first, 1876, in which the assessed valuation of property shall exceed one million of dollars, for all purposes, shall not be in excess of the following ratio, to wit: Counties in which the assessed valuation of property shall exceed five million of dollars, $6.00 on each thousand dollars thereof; counties in which the assessed valuation of property shall be less than five millions, and exceed one million of dollars, $12.00 on each thousand dollars thereof."

The action of the board of county commissioners preliminary to and in submitting to vote of the qualified electors of said county at the general election held October 7, 1879, the question of creating an indebtedness of $50,000, for the purpose of erecting necessary public buildings, and $5,000 for the building and construction of public roads and bridges, was strictly in conformity with said act. The election was duly held, and the vote on that question duly had and canvassed, and found and declared to be carried. And all the acts and doings were properly recorded, and the bonds prepared, executed, and issued in strict accordance with the provisions of said act. And the bonds were sold for 95 cents on the dollar of their par value, and have, since within one year of their issue, been held and owned by purchasers for full value, without actual notice of any illegality or infirmity in said bonds. The plaintiff is the holder *of* the coupons sued upon, by delivery of the same with properly executed

written assignments thereof to him, by the former owners of such coupons, but without payment by him of any money therefor. The assessed valuation of taxable property in said county of Lake for the year 1879 was $3,485,628, and for the year 1880 was $11,124,489, and such assessment was completed on the 1st day of September in each of said years, by the action of the board of equalization. Section 30 of the act above referred to made it the duty of the board of county commissioners of each county to make out semiannual statements at the regular sessions in January and July, and publish them in some weekly newspaper published in the county, or, if no such newspaper be so published, to cause such statements to be posted in three conspicuous places in the county, one being the courthouse door, showing the amount of debt owing by the county, in what it consists, what payments have been made thereon, the rate of interest, and a detailed account of receipts and expenditures for the preceding months, and striking a balance showing the deficit or the balance in the treasury. "And the statement thus made, in addition to being published as before specified, shall also be entered of record by the clerk of the board of county commissioners, in a book to be kept by him for that purpose only, which book shall be kept open to the inspection of the public at all times." There was no evidence in the case that any such semiannual statement made by the board of county commissioners for said county of Lake at the January or July sessions of said board in the year 1880 had ever been entered of record in any book kept for that purpose only, as required by said act. The fair inference from the testimony is that no such record was ever made. Upon the trial the defendant, to prove its allegation that on July 31, 1880, the date of said bonds, and also at the time they were issued, the aggregate outstanding indebtedness of said county of Lake was largely in excess of the amount of the extreme limitation fixed by the constitution of said state and the act aforesaid, offered in evidence a book kept in the years 1880 and 1881 by the county clerk of said Lake county, called the "County Clerk's Account Book," and purporting to contain, among other things, detailed statements of the financial condition of said county on January 1, 1880, July 1, 1880, and January 1, 1881; and the same was admitted in evidence by the court, over the objection and exception of plaintiff that it was not the record provided for by said act, nor the semiannual statement of the board required by said act. Much other evidence tending to show the existence of outstanding warrants and indebtedness of said county at the time of issuing said bonds to an amount largely in excess of the aggregate amount of indebtedness which the county could, under said constitutional limitations, lawfully incur, was offered by defendant, and admitted by the court, over the objections of the plaintiff that the same was incompetent and immaterial. At the conclusion of the evidence the court refused all of the plaintiff's requests for instructions to the jury, and instructed the jury to return a verdict for the defendant; to which refusal and instruction exceptions were duly taken by the plaintiff. The jury accordingly found for the defendant, and judgment for the defendant was entered upon the verdict.

H. B. Johnson, Daniel E. Parks, and E. F. Richardson, for plaintiff in error.

George R. Elder, C. S. Thomas, W. H. Bryant, and H. H. Lee, for defendant in error.

Before SANBORN and THAYER, Circuit Judges, and LOCHREN, District Judge.

LOCHREN, District Judge, after stating the case as above, delivered the opinion of the court.

1. The plaintiff, by the delivery to him of the coupons and written assignments thereof, became the legal owner of such coupons, and entitled to maintain an action upon them, whether he had actually paid the former owners any consideration for them or not. Holding them by valid written transfers from former bona fide holders for value, he succeeded to all rights of such former holders. No

defense is pleaded which makes it material whether the plaintiff, under such circumstances, did or did not pay value for the coupons. Sheridan v. Mayor, 68 N. Y. 30; Commissioners v. Bolles, 94 U. S. 104, 109. The instruction to the jury asked for in plaintiff's second request was correct, and the refusal of the court to give such instruction was error.

2. A county is an organized political subdivision of the state. It has such power, and such only, to contract loans and incur other forms of indebtedness as is expressly or by fair implication granted to it by the legislature of the state, which has plenary authority over that subject, as it has over all ordinary subjects of legislation, except in so far as its authority is taken away, curtailed, or restricted by the controlling force and effect of the provisions of the state constitution. Section 6 of article 11 of the constitution of Colorado is wholly restrictive in its effect and operation, and does not by its terms authorize any county to incur any form of indebtedness for any purpose. It forbids the contracting of a debt of a specified kind, except for specified purposes, and within specified limits, and forbids the contracting of indebtedness, of any and all kinds beyond specified limits, and then prescribes an enlarged limit as to indebtedness, after a county shall have been authorized by vote of the qualified electors, in the manner indicated, with a provision in respect to bonds, if any be issued. But it does not by its own terms grant to any county the power to incur indebtedness, even within the specified restrictions. The authority to grant such power, within such restrictions, therefore, necessarily remains in the legislature, which might, in its discretion, prescribe further limitations and restrictions, and provide in detail in respect to the manner in which the power should be executed, and in respect to what acts should be done, and what record made in the execution of such power, and as to the effect of such acts and records. The bonds in question in this case were issued under the provisions of the act of March 24, 1877, which is expressly referred to in the recital in the bonds, and six sections of which were printed upon the bonds. This act, by its terms, commits to the board of county commissioners the power to determine the necessity of creating an indebtedness for the erection of public buildings, and of submitting the question to a vote of the qualified electors at a general election, and of issuing the bonds, if the vote is favorable, keeping within the limitation contained in section 21 in respect to the aggregate indebtedness of the county at the time of issuing the bonds. The granting of these powers necessarily intrusts to the board of county commissioners the power and duty of determining whether the proposition to create the indebtedness was carried at the election, and the ascertainment of the fact that the aggregate amount of all forms of the county indebtedness was within such amount that it would not, by the issue of the bonds, be made to overpass the prescribed limitation. Hence, except for the provision contained in section 30 of the same act, requiring the board to make and publish the semiannual statements of the indebtedness and financial condition of the county, and requiring the clerk of the board to record such statements in a book to be kept for that

purpose only, and to be open to public inspection, the recitals in the bonds above quoted would be conclusive, and would estop the county in a suit by a bona fide holder of the bonds or coupons. Commissioners v. Aspinwall, 21 How. 539; Coloma v. Eaves, 92 U. S. 484; County of Clay v. Society for Savings, 104 U. S. 579; Commissioners v. Bolles, 94 U. S. 104; Evansville v. Dennett, 161 U. S. 434, 446, 16 Sup. Ct. 613; Wesson v. Saline Co., 20 C. C. A. 227, 73 Fed. 917; Chaffee Co. v. Potter, 142 U. S. 355, 12 Sup. Ct. 216. In Chaffee Co. v. Potter, last cited, where the recital in the bonds contained a certificate that the total amount of the issue did not exceed the limit prescribed by the constitution of Colorado, and had been duly authorized by a vote of the qualified electors of the county of Chaffee at the general election named, it was held that the county was estopped to dispute these recitals in an action upon coupons by an innocent holder for value. The case of Sutliff v. Commissioners, 147 U. S. 230, 13 Sup. Ct. 318, deserves special attention, as the bridge bonds, coupons from which were sued upon in that case, were issued under the same act, and upon the authority of the same vote of the qualified electors, as were the public building bonds which are under consideration in this case. In the Sutliff Case it was held that as section 30 of the same act, under which the bonds were issued, made it the duty of the board of county commissioners to make out and publish semiannual statements showing the indebtedness, if any, of the county, and that such statements should be entered of record by the clerk of the board in a book to be by him kept for that purpose only, and to be open to the inspection of the public, a person about to purchase such bonds was charged with the duty of examining this public record provided for by the very act under which the bonds were issued, and from that inform himself whether the amount of the issue stated in the bonds increased the aggregate indebtedness of the county beyond the constitutional limit, which was there held to be identical with the like limitation contained in the act, namely, $6 on the $1,000 of the assessed valuation,—the total assessed valuation of the taxable property in that county being more than $5,000,000,—and that because of such public record of such semiannual statements the county was not estopped to prove that before such bonds were issued the indebtedness of the county had passed the constitutional and statutory limit. The theory of that case is that a purchaser of bonds issued under that act would have constructive notice of what the record of the semiannual statement provided for by the act, and which it was his duty to examine, would have shown, had he in fact examined such record. The fact that such record actually existed was assumed and not questioned in the Sutliff Case. But in this case it is clearly shown that there never were any such semiannual statements, or record thereof, covering any of the time which could affect the legality of these bonds. As there was no such record in existence as the act required and contemplated, there was no record which a purchaser of these bonds was bound to examine, or which would be constructive notice to him of the aggregate indebtedness of the county when the bonds were issued. Such purchaser was therefore entitled to rely on the recitals in the bonds. And as

one of these recitals was a certificate that all the provisions of the act had been fully complied with by the proper officers in the issuing of the bonds, and as a provision of that act limiting the issue of the bonds by the aggregate of all the indebtedness of the county was, in effect, identical with the constitutional provision on the same subject, the recital was equivalent to a certificate that this provision of the constitution had been complied with, and brings the case within the decision in Chaffee Co. v. Potter, supra. It has often been held that, in the absence of any statutory public record, a county or municipality may be estopped by similar recitals in bonds from showing that when the bonds were issued there was an aggregate outstanding indebtedness rendering the issue of bonds illegal. Marcy v. Oswego, 92 U. S. 637; Humboldt v. Long, Id. 642, 645; Buchanan v. Litchfield, 102 U. S. 278, 292; Sherman Co. v. Simons, 109 U. S. 735, 3 Sup. Ct. 502; Dalles Co. v. McKenzie, 110 U. S. 686, 4 Sup. Ct. 184; Wilson v. Salamanca, 99 U. S. 499. The debt created by the bonds in this case was incurred, not at the time the board of commissioners determined that it was necessary, nor when the qualified voters of the county gave authority to incur it, nor at the date of the bonds (they having been antedated), but at the date, later than September 6, 1880, when the bonds were in fact issued and sold. The bonds recite that the whole issue is $50,000, and this recital was notice to purchasers of the bonds of the creation of an indebtedness of the county to that amount. The assessed valuation of the taxable property of the county of Lake, according to the assessment which was completed by equalization on September 1, 1880, was $11,124,489. This assessed valuation, in view of the vote authorizing the creation of the indebtedness, would admit of a lawful aggregate of indebtedness of that county to the extent of upward of $66,000. So that the recited amount of that issue of bonds was not of itself notice to a purchaser that the lawful aggregate limit of indebtedness had been passed, even if such purchaser was bound to take notice of the assessed valuation of the taxable property of the county, as was held in Dixon Co. v. Field, 111 U. S. 83, 4 Sup. Ct. 315. As said by the court in Chaffee Co. v. Potter, 142 U. S. 355, 363, 12 Sup. Ct. 216, 219:

"The purchaser might even know—indeed, it may be admitted that he would be required to know—the assessed valuation of the taxable property of the county; and yet he could not ascertain, by reference to one of the bonds and the assessment roll, whether the county had exceeded its power, under the constitution, in the premises."

The court therefore erred in overruling the plaintiff's objections to the county clerk's account book, the warrant register, and the proof of publication of financial statements. None of this evidence was material, as none of it constituted constructive notice to a bona fide purchaser of the bonds.

3. A question not suggested by the answer in the case remains to be considered. The first part of section 6 of article 11 of the constitution of Colorado, above quoted, as applicable to the class of counties having an assessed valuation of taxable property exceeding $5,000,000, in the absence of any vote of the qualified electors, *restricts the* amount of debt by loan which the county can be allowed

to contract in any one year to $1.50 on each $1,000 of such assessed valuation. It is questioned whether this limitation upon the amount of debt by loan which the county may be allowed to contract in any one year does not continue, even after authority has been given by vote of the qualified electors, to create an aggregate indebtedness to the extent, it may be, of $6 on each $1,000 of such assessed valuation. The contention that the restriction referred to, respecting the amount of debt by loan which a county may be allowed to contract in any one year without such vote, continues after the changed condition effected by such vote, appears to rest upon what seems to us to be a misconception of a sentence in the opinion in Lake Co. v. Rollins, 130 U. S. 662, 669, 9 Sup. Ct. 651. Under the stipulation in that case (page 664, 130 U. S., and page 651, 9 Sup. Ct.), the only question in the case was whether the limitations contained in section 6 of article 11 aforesaid were restrictive only of the power of counties to create debts by loan, or restricted further the power to create and incur all forms of indebtedness; it being admitted by the stipulation that if the general limitations expressed in that section covered all forms of indebtedness, and were not confined to debts by loan exclusively, the defendant in that action was entitled to judgment. Mr. Justice Lamar pointed out that the first clause of the section, down to where the subject of aggregate indebtedness is considered, speaks only of debts by loan. He then added, "Here the matter of indebtedness by loan is completed, and the section passes to a broader subject." In view of the exact question then under consideration, this language means that at the point of the section indicated the matter of debt by loan exclusively is completed, and that thenceforward the section passes to a broader subject, embracing all other forms of indebtedness as well as debt by loan. It is obvious that every sentence of the entire section may enlarge, limit, or in some way qualify the power to contract debts by loan. The provision in respect to submitting the question of incurring indebtedness to the qualified electors contemplates the submitting of specific propositions, and, if the vote is in favor of incurring the debt, the provision that, if bonds are issued, they shall run not less than 10 years, necessarily provides that such debt, when so authorized, may be created by loan. The case of People v. May, 9 Colo. 80, 10 Pac. 641, does not touch the question of how much indebtedness by loan may be contracted by a county in any one year, after authority has been given by a majority vote of the qualified electors to contract the indebtedness. In that case, as in the Rollins Case, the sole question considered arose upon the contention that the constitutional restriction contained in said section 6 as to the aggregate amount of county indebtedness should be regarded only as a limitation of county indebtedness by loan. The court held, as in the Rollins Case, that the general limitations as to aggregate indebtedness embraced all forms of county indebtedness. The provisions of section 6 aforesaid divide themselves into two general clauses, distinct from each other, and each applicable to a condition differing from that to which the other is applicable. The first clause, extending down to the preposition "unless," prescribes the restrictions and limitations in respect to the

power of contracting indebtedness by counties where there has been no vote of the qualified electors authorizing the creation of specific indebtedness, and not only limits the aggregate amount of indebtedness that can be incurred for all purposes and in all forms, but also limits the amount of indebtedness by loan that can be created in any one year. The second clause, following the preposition "unless," provides for a changed and different condition, in which a county, by vote of a majority of its qualified electors, upon a proposition submitted to them at a general election, has been authorized to create a specific indebtedness. In that case a single and different limitation is prescribed, namely, that the aggregate debt of the county shall not be made to exceed twice the amount limited in the other case, and a provision (contemplating debt by loan) that the bonds, if any be issued therefor, shall not run less than 10 years. But there is no limitation in such case as to the amount of the indebtedness so authorized which can be created in any one year. It would be singular, indeed, if, after authorizing a county, upon vote of its qualified electors, to create a specific indebtedness for the erection of necessary public buildings, the same provision should cripple the power to erect such buildings by requiring that the long-time bonds authorized should only issue and be sold in small annual installments; making the county wait, perhaps, a series of years before getting enough money to warrant it in beginning the erection of the necessary public buildings, and be paying in the meantime interest on the earlier bonds, the proceeds of which would be lying idle, awaiting the accumulation of enough to begin with. Neither the grammatical construction of the section nor any sound reason justifies the importation into the last clause of the section of the restriction in the first clause as to the amount of debt by loan which can be created in any one year. It may be added that the legislative construction of this section of the constitution, as shown by section 21 of the act of March 24, 1877, under which these bonds were issued, conforms to the views here expressed, and that the supreme court, in Sutliff v. Commissioners, 147 U. S. 230, 234, 13 Sup. Ct. 318, refers to this statute as being, in respect to limitations, in conformity with the constitution.

4. The county of Lake received full consideration for these bonds. Most of them were taken directly by the contractor who erected the public buildings for which they were issued. They passed immediately to bona fide holders for full value. The county acknowledged and ratified them by paying the interest upon them, as it matured, for several years. If it were conceded that after the board of county commissioners of Lake county had been, by vote of the qualified electors, empowered to create a debt of $50,000 to erect necessary public buildings, they were required to execute that power by issuing not more than $16,500 of the $50,000 in any one year, and they issued the whole $50,000 at once, instead of issuing the same in yearly installments, the case would not be one of lack of power to issue all the bonds, but a case where the power existed, but was irregularly exercised. In such case the payment of interest on the bonds for several years estops the county from asserting such irregu-