

representatives; and the act of the legislature under which the election was held and the bonds issued must be held to have been passed with all the solemnity and formality requisite to a valid act of the general assembly of North Carolina, and the bonds issued in pursuance of such act are valid, and binding upon the defendants in this cause. To hold otherwise would be to impair by judicial decision the obligation of a contract made in compliance with the law, which the constitution of the United States does not permit.

Second. Is the defendant corporation estopped or bound by the waiver of the defense as to the validity of the bonds by the consent judgment entered in the superior court of Granville county? Consent judgments do not establish principles. They are too often signed as a matter of course, at the solicitation of counsel, and only signify the court consents that litigants may settle their controversy by agreement, make such agreement matter of record, and give to it the dignity of a decree. It will hardly be contended such judgments are not binding inter partes. They are contracts in the most solemn form, sanctioned by the court, and cannot be collaterally attacked. There is no suggestion of fraud, irregularity, or even excusable neglect. But it is argued that because defendant is a municipal corporation, represented by the several defendants named, a consent judgment would not be binding; and as authority for this position *Kelley v. Milan*, 127 U. S. 139, 8 Sup. Ct. 1101, and *Brownsville v. Loague*, 129 U. S. 493, 9 Sup. Ct. 327, are cited. A full discussion of this position would involve the nice distinctions drawn by eminent authorities of definitions, which are sometimes dangerous. Many definitions of a corporation have been attempted. Most of them are too narrow, and many too broad. Most of them include one or more faculties which are not essential. *Kyd, Corp.* 70; *Thomas v. Dakin*, 22 Wend. 70; *Dill Mun. Corp.* (4th Ed.) 18; *Ang. & A. Corp.* 1, 30; *Dartmouth College v. Woodard*, 4 Wheat. 518; *Memphis & L. R. R. Co. v. Railroad Com'rs*, 112 U. S. 609, 5 Sup. Ct. 299. But, disregarding the nice distinctions, all authorities agree the corporation acts by and through its designated officers, one or more, and except where such acts are ultra vires the body is bound thereby. The personnel of the officers may be changed, and the present officers of defendant corporation may be imbued with different ideas or conceptions of the law from their predecessors, but courts can recognize no changes in the personnel of corporate officers. It is a corporate body, with which the courts must deal, and not the officers. If their predecessors acted within the scope of their authority, the present officers would be bound by such action, as would the corporation itself. An examination of the authorities cited in no way conflict with this position. In the first case cited the want of authority in the municipal officers to issue the bonds under consideration appeared in the statute (*Kelley v. Milan*, supra), and in the second case it was an application for a mandamus to compel the levy of a tax, and it appeared that the municipality was without power to levy a tax to pay coupons of municipal bonds which had been declared void (*Brownsville v. Loague*, supra). This last decision is cited and commented on in

Franklin Co. v. German Sav. Bank, 142 U. S. 93, 12 Sup. Ct. 147, which is a strong authority for the position that the judgment of a court having complete jurisdiction of a cause cannot be collaterally attacked. But whether the judgment in the mandamus proceeding, entered in pursuance of a compromise, by consent, in the state court, is an estoppel, or the waiver of the defense of the invalidity of the bonds in that proceeding is binding on the defendant corporation, depends upon the power of the commissioners or municipal officers to issue the bonds originally. True, defendant had its day in court, and waived this defense, and not only consented to final judgment, but the judgment of the court was performed; the bonds have it set out in their face as authority for their issue, in addition to the act of the legislature. This would be binding on defendant corporation and its officers, unless such action was ultra vires. The doctrine of accord and satisfaction does not obtain in North Carolina since the adoption of the Code in 1868. If defendant's officers had the power to issue the bonds originally, the consent judgment would be binding, and an estoppel. If, however, there was a want of power to issue the bonds originally, the consent judgment would not confer the power, or validate the bonds. To put it differently: If the defendants can now go behind the ratification, examine the journal of the house, and that journal shows the conditional admission, the consent decree would not confer power the corporate officers did not possess. In the view now taken of the first question, as a compromise under the Code the consent decree is an estoppel.

A decree will be drawn granting judgment in favor of the plaintiff for the sum of \$4,320, with interest as set forth in the first prayer for relief, and a writ of mandamus will issue to the defendants, the commissioners of the town of Oxford, to levy sufficient taxes to pay this judgment and the costs of this action, to be taxed by the clerk.

FAYERWEATHER et al. v. RITCH et al.

(Circuit Court, S. D. New York. October 22, 1898.)

PRIVILEGED COMMUNICATIONS—ATTORNEY AND CLIENT—TESTIMONY AS TO CONTENTS OF EXECUTED INSTRUMENT.

The reason for the rule which precludes an attorney or counsel from disclosing transactions or conversations between himself and his client ceases as to the contents of written instruments after they have been executed by the client, and neither such general rule nor the statute of New York (Code Civ. Proc. §§ 835, 836) prevents a counsel who prepared a codicil to the will of a client, since deceased, which codicil has been destroyed, from being required to state, if within his knowledge, whether such codicil was executed, and, if so, its contents, though he cannot, under the statute, be required to testify as to the transactions or conversations leading up to its execution.

Application to compel a witness to answer questions certified by the examiner, sitting to take testimony in equity.

One of the issues upon which complainant is seeking to put in proof is as to the destruction of a document, executed by a deceased testator and known