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Municipal Bonds as Negotiable Instruments

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MUNICIPAL BONDS AS NEGOTIABLE INSTRUMENTS.

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Presented

For the Degree of Master of Law

by

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MUNICIPAL BONDS AS NEGOTIABLE INSTRUMENTS.

The issue of bonds by the municipalities of this country started an important line of litigation which has permeated every state and commanded a solution by our courts, both state and Federal. The nicety of the questions that arise has not only divided the bench in the various jurisdictions and caused conflict in the decisions of the different state and United States courts, but have occasioned an oscillation of opinion in the same court itself.

In this thesis we shall state the principles generally recognized as applicable to municipal bonds, but shall treat more particularly with the decisions of the United States Supreme Court and the Court of Appeals of the State of New York. A New York attorney should know the law of his own state, and, by understanding the decisions of the United States courts, he can safely advise those dealing in the municipal securities of other states, as actions arising between parties of different states can be brought in the Federal courts by reason of the residence of the parties.

Municipal securities form a large part of the wealth of the
country, so the questions arising are of the greatest importance to the communities bound by them as well as to the capitalists and business men dealing with them as commercial commodities. As a basis for the subject it seems advisable to consider the relation existing between the state and its subdivisions, or the authority which a municipal corporation proper, an organized township, a county, a school district, or a particular strip of territory may have to issue these commercial instruments, pass them into the financial world, and realize enormous sums of money which they may expend for certain purposes, as erecting public buildings and bridges, lighting streets, and other local government purposes, or, as in most cases where the court is invoked for aid, bonds issued for the construction of a proposed railroad through that vicinity.

Comparatively little litigation results from the issue of bonds securing debts for local administration. In those cases there is a quid pro quo. The bonds are issued, the money is received, and is expended so as to give a more efficient and economical government and facilitate commerce and communication. The people have an appreciable benefit, their property increases in value, and they have no object in defeating the collection of the outstanding obligations.
Those over which the fight has been thickest were issued to aid railroad companies, and are known as "railway aid bonds."

Allured by the prospects of a "boom" which a contemplated railroad might give to a town, county, or city through which it might pass, they would issue bonds for enormous sums, in many cases to forty or fifty per cent of the value of the taxable property payable in from fifteen to thirty years. The bonds would be issued negotiable in form and having coupons attached also of a negotiable nature, in exchange for stock in the proposed road. After the bonds had passed into the hands of bona fide purchasers, and, perhaps, several payments of interest had been paid thereon, the railroad, for some reason, has failed to build its roadbed or the road, if constructed, has proved of but little advantage to the bonded community. Awaking to this situation, they are astute to find some defence, however shadowy, to defeat an action brought by a holder of the bonds; or, taking the aggressive, they enter a court of equity and petition for their cancellation. On these lines they have fought to the bitter end with various results.
The original source of all governmental power rests in the state and is exercised by its legislature. Its only limitation is the constitution of the United States.

In England the hundred and the shire were recognized by the common law for the purposes of local government. But parliament has changed their status by numerous laws.

In this country the local divisions were established by the state so the legislatures may change their organization and function at will without question. General laws are continually being passed affecting the relation of the state and its divisions. The cities are created by the legislative power and their powers and privileges are expressly prescribed in their charters. They are simply agencies of the state government. This being true, no public or quasi-corporation, as these subdivisions are called and correctly so in New York by statutory definition, cannot issue valid bonds without authority from the state. But how must this authority be granted?

This leads to the interesting question whether a public corporation possesses the implied power to borrow money for its ordinary purposes, and as incidental thereto, the power to issue commercial securities, that is, paper that cuts off defences
when it is in the hands of a holder for value acquired before it is due. The cases are conflicting. In the argument for the affirmative it is claimed that as municipal corporations are clothed with greater powers than trading and commercial corporations, they ought to have as effectual means to accomplish their objects, that is, to use credit or to create debts; therefore, if they can create debts, they may borrow the money to pay for them; and if they may borrow the money, they have the incidental power to do like other borrowers, namely, give a negotiable bill, note, or bond therefor. Mr. Dillon, in his admirable work on Municipal Corporations, attacks this doctrine and shows its fallacy. (I Dillon Mun. Corp. sec.507) He argues that there is no resemblance between private and public corporations in this regard as the latter are mere branches of government and are not organized for commercial purposes; that they have, in general, but one mode of meeting their liabilities upon which creditors rely and that is taxation. He says: "Private corporations are much more vigilant and watchful of their interests than it is possible for public or municipal corporations to be. The frauds which unscrupulous officers will be able successfully to practice, if an implied and unguarded power to issue negotiable securities is
recognized, and which the corporation or the citizen will be helpless to prevent, is a strong argument against the judicial establishment of any such power. And the argument is unanswerable, when it is remembered that in ascertaining the extent of corporate powers there is no rule of safety but the rule of strict construction; and that such an implied power is not necessary, however convenient it may be at times, to enable the corporation to exercise its ordinary and usual express powers, or to carry into effect the purposes for which the corporation is created."

When a municipality has the right to contract a loan it does not follow that it has the right to issue negotiable bonds and put them on the market as evidences of such loan.

Merrill vs. Monticello I38 U.S. 673 at p. 691.


To borrow money, and to give a bond or obligation therefor which may circulate in the markets as a negotiable security, freed from any equities that may be set up by the maker of it, are, in their nature and in their legal effect, essentially different transactions.

See Wells v. Town of Salina I19 N.Y. 287, 290.

In Hill v. Memphis I14 U.S. I98, 203, it was held that the power conferred by statute on municipal corporations to sub-
scribe for stock in a railway corporation did not include the power to create a debt and issue negotiable bonds in order to pay for that subscription.


In Young v. Clarendon Township 132 U.S. 340, 347, many of the decisions bearing on this question were referred to, and the court said: "Even where there is authority to aid a railroad, and incur a debt in extending such aid, it is well settled that such power does not carry with it any authority to execute negotiable bonds, except subject to the restrictions and directions of the enabling act."

Wells v. Supervisors 102 U.S. 625.


Kelly v. Millan 127 U.S. 139.


"It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable. Any fair, reasonable doubt
concerning the existence of power is resolved by the courts against the corporation, and the power is denied."

I Dillon Mun. Corp. sec. 69.

It may be stated, however, as a settled doctrine that no tax can be authorized by the legislature for any purpose which is essentially private. The difficulty lies in determining what are public purposes. The construction and grading of streets; the construction of waterworks; of a bridge; of a town hall; gas works; markets; the providing of fire engines; the laying out of cemeteries have been decided objects of municipal care. Also the promotion of railroads and highways is a public purpose. But the loaning of money to enable citizens to rebuild their burned houses, to equip and furnish manufacturing establishments of individuals, to construct saw or grist mills, to improve a water privilege and manufacture lumber, to establish a citizen in business, to provide destitute citizens with provisions and grain for seed and feed, would not be within the scope of public purposes.

2 Daniel's Neg. Inst. sec. 1552.
Having briefly considered the nature and source of the authority of public corporations to issue bonds and some of the purposes for which they may be issued, we shall now note some of the mistakes which municipalities have made in the issuance of them and how the courts have treated bonds affected by these defective operations.

The statutes of the states granting this power are similar in their requirements. Most of them provide that whenever a majority of the taxpayers of any municipal corporation, whose names appear upon the last preceding tax list or assessment roll of said corporation as owning or representing a majority of the taxable property in the corporate limits of such corporation, shall make application to some designated person or body, as a county judge, the supervisors or the grand jury of a county, by petition verified by one of the petitioners setting forth that they are such a majority of taxpayers and representing such a majority of taxable property, and that they desire that such municipal corporation shall create and issue its bonds to an amount named in such petition, but not to exceed a certain designated per cent., usually from 5% to 20% of the whole taxable property, as shown by the last preceding tax list and assessment roll, it is the duty of the county judge or grand jury, as the case may be, to give notice that he
will take proof of the facts alleged in the petition and appoint commissioners to issue the bonds or giving notice that a vote will be taken by the taxpayers at a designated time.

Other special requirements are found in some states. Through ignorance or inadvertence these provisions are often deviated from, and the courts are called upon to determine the effect on bonds in the hands of the first holders or, more frequently, when held by third parties having no knowledge of any defect.

The doctrines of the United States Supreme Court and the New York Court of Appeals differ in their opinions of the effect of not strictly pursuing the statutory provisions.

Generally stated, the United States Supreme Court doctrine is that if authority is once acquired and then there is some non-compliance with the preliminary requirements, it will be deemed an irregularity and the municipality will not be allowed to set it up as a defence to an action brought by a bona fide holder. This court early established the policy of holding the bonds valid if possible. If, however, through some defective proceeding the authority was never granted, the defence will be conclusive. The want of power to issue the bonds is always a good defence.
In St. Joseph Township v. Rogers 16 Wall. 644, a case involving the validity of municipal railway aid securities, Justice Clifford, delivering the opinion of the court, said: "Bonds, payable to bearer, issued to a municipal corporation to aid in the construction of a railroad, if issued in pursuance of a power conferred by the legislature, are valid commercial instruments; but if issued by such a corporation which possessed no power from the legislature to grant such aid, they are invalid, even in the hands of innocent holders. Such a power is frequently conferred to be exercised in a special manner, or subject to certain regulations, conditions, or qualifications; but if it appears that the bonds issued show by their recitals that the power was exercised in the manner required by the legislature, and that the bonds were issued in conformity with those regulations and pursuant to those conditions and qualifications, proof that any or all of those recitals are incorrect will not constitute a defence to the corporation in a suit on the bonds or coupons, if it appears that it was the sole province of the municipal officers who executed the bonds to decide whether or not there had been an antecedent compliance with the regulations, conditions, or qualification which it is alleged was not fulfilled."
In New York the courts seem to insist on all preliminary requirements being more strictly performed than do the United States courts, and municipalities are not so liable to be estopped by recitals as in the Federal courts. The New York courts take this view on the grounds that, as the proceeding rests wholly upon statute, and is in derogation of the common law, and affects the rights of property of individuals, the statute must be strictly pursued in all respects pertaining to the question of jurisdiction, to render the proceeding effectual. Town of Solon v. Williamsburg Savings Bank 114 N.Y. p130.

Jurisdictional Defects.

A general statement, as above, is not sufficient to give any definite idea of what defects are fatal, so it seems feasible to examine some of the leading cases somewhat in detail.

McClure v. Township of Oxford, 94 U.S. 429 holds that if the instrument refers on its face to a statutory power, every holder is made chargeable thereby with notice of such statute and its limitations. In this case a bill was passed by the legislature of Kansas granting power to the township to issue bonds for the purpose of aiding in the building of a bridge across the Arkansas River. The statute provided that notices
of election shall be posted thirty days. The notices were posted for thirty days before the election but before the law went into effect leaving only eight days from the time the law went into effect and the election. This was held to be fatal.

Purdy v. Lansing, 128 U.S. 557, turned upon the construction of a New York statute which authorized and empowered the New York and Oswego Midland Railroad Company "to extend and construct their railroad upon such route and location and through such counties as the board of directors of the company should deem most feasible and favorable for the construction of the road. It also gave authority to construct certain branch roads and provided that any town in any county, through, or near which, the railroad or its branches might be located, to aid or facilitate the construction by the issue and sale of its bonds. The bonds were issued without a previous designation by the company of all the counties through which the extension authorized would pass. The court held that it was an inherent defect, that the whole extension or branch must be located before the bonds of any town can be issued, and that they were invalid. (See Mellen v. Lansing 20 Blatchford 278, 280, involving the
same question.)

In German Bank v. Franklin County 128 U.S. 526, citizens of Illinois voted to take stock in the B.&E.R.R. and issue its bonds therefor on September 11, 1869, upon certain specified conditions and not until they were complied with, one of the conditions being, "that said road shall be commenced in the county of Franklin within nine months from the date of said election, and completed through the county by the first day of June, 1872". The condition was not complied with and the bonds were held invalid. Justice Blatchford, in delivering the opinion of the court, said, that by the law in force "the county had the right, in voting for the subscription, to prescribe the condition upon which the subscription should be made, and that under such circumstances, any condition imposed by the vote, as a condition precedent to the issuing of the bonds in payment of the subscription, was a part of the vote, and a part of the authority for the subscription".

In Coler v. Cleburne, 131 U.S. 162, the bonds were ante-dated and signed by an ex-mayor when the statute provided that such bonds should be signed by the mayor. They were held to be void. The amended laws of New York, Chapter 925, 1871, provides that "whenever a majority of the taxpayers of any municipal
corporation in this state who are taxed or assessed for property, not including those taxed for dogs or highway tax only, shall make application, &c., bonds will be issued. If the petition does not state that the person petitioning constitute a majority, "not including those taxed for dogs and highway tax only," the county judge acquires no jurisdiction and bonds issued under such circumstances are void.

Rich v. Mentz 134 U.S. 632
Town of Mentz v. Cook 108 N.Y. 504, and cases cited.

In Craig v. Town of Andes, 93 N.Y. 405, some of the petitioners attached to their requests a condition that the road should be located upon a specified line. Excluding these, there remained much less than a majority either of taxpayers or property. The court, dividing four to three, held that the condition affected the entire petition and rendered it void, and as the defect was apparent upon the face of the petition, the county judge acquired no jurisdiction, and that even bona fide purchasers were chargeable with the defect. Finch, J. wrote a vigorous dissenting opinion attacking both the conclusion of the majority and their reasoning.
A failure to verify the petition presented to the county judge is a jurisdictional circumstance which will invalidate the bonds. (Craig v. Town of Andes, supra,)

The last important case involving the validity of municipal bonds is the City of Brenham v. German-American Bank I2 U.S. Sup.Ct.Rep.559. The action was brought by the bank to recover on certain bonds and coupons issued by the city. An act of the legislature of Texas incorporating the city provided that the city council should have the power and authority to borrow for general purposes not exceeding $15000 on the credit of the city. In another section it prescribed that bonds of the city should not be subject to tax under the act. Stock was subscribed to a proposed railroad and the bonds of the city issued to the amount of $15000. The court held that the power to borrow for general purposes on the credit of the city did not authorize it to issue bonds, and it could not be inferred from the provision that "bonds of the city were exempt from taxation". Justices Harlan, Brewer, and Brown dissented. The power to borrow for general purposes limited the city to the power to borrow for ordinary governmental purposes such as are generally carried out with revenues derived from
taxation. It is a well established rule that any doubt as to the existence of a power to issue negotiable bonds will be determined against its existence. The case is particularly valuable for its review of the leading cases both in the prevailing and dissenting opinions.

Irregularities.

Most defects which are mere irregularities are cured by the recitals in the bonds themselves, and the municipal corporation is estopped from alleging the mistake as a defence. They will be considered under the head of estoppel. But, before passing, we will note two New York cases in which the following were adjudged mere irregularities and did not vitiate the bonds: bonds issued payable twenty years from date when the bonding act of 1869 sec. 4 only authorized the issue of bonds "payable at the expiration of thirty years from their date"; (Brownell v. Town of Greenwich 114 N.Y. 518); a petition to a county judge recited that "the undersigned, representing a majority of the taxpayers" &c, the town claiming that by using the word "representing" the petition failed to set forth that the petitioners were a majority, and the same petition used the
letter?,"J.S.",for a seal instead of wax,wafer, or other tenacious substance recognized as a seal at common law.

Town of Solon v. Williamsburg II4 N.Y. 122.

Curative Acts.

Irregularities and defects in the exercise of the power to issue bonds by municipal corporations or a defective subscription to the stock of railroad companies can be cured by a retrospective statute declaring that what was done was legal in the absence of a special constitutional restriction, but such statute must clearly state its purpose and not be clothed in indirect ambiguous terms. (I Dillon Mun. Corp. sec. 54A.)

When the legislature has the power to authorize an act to be done in any manner it seems best to the legislature, and without restriction, and the legislature passes an act to be done under certain limitations and restrictions, as to the manner of exercising power, and the act is done without a compliance with the legislative restriction, the legislature has power to pass a legalizing or curative act by which the former act becomes legal.

State government is an independent existence, representing
the sovereignty of the people. The power of the legislature is the power of that sovereignty, and is supreme in all respects, and unlimited in all matters pertaining to legitimate legislation, except in those instances where the people have, in their fundamental law, limited or restricted it.

Town of Guilford v. Chenango Co. 13 N.Y. 143.

Effect of Railroad Consolidating.

Is the validity of bonds issued in payment of a subscription to a railway affected by a consolidation of that road with another? If there is a statute which provides that such bonds can only be issued by a vote of taxpayers, to a particular road and after the vote is taken the original road consolidates with another, and the bonds are then issued to the consolidated road, they are void. In that case the authority would be given to subscribe to one company when, in fact, the aid was given to another. It would be a jurisdictional defect and the bonds would be void even in the hands of a bona fide purchaser.

Harshman v. Bates County 92 U.S. 569,
Marsh v. Fulton County 10 Wall. 676.
It must be remembered, however, that the bonds in the Fulton County case contained no recitals which, in many of the other cases in this line, make distinguishing features.

If there is a statute providing for the consolidation of such corporations at the time the vote is taken it will be considered that the vote authorizing such subscription was made with the statute in mind and a consolidation will not affect the validity of the bonds.

Livingston Co. v. Portsmouth Bank 128 U.S. 102;
Nugent v. Supervisors of Putman Co. 19 Wall. 241.

When the obligor is estopped from setting up irregularities.

This leads to a discussion of the nature and effects of the recitals in the bonds themselves, or expressed on the attached coupons and the other grounds of estoppel. When considering defects which were jurisdictional in their nature, it was found that no act of the municipality could bridge the chasm. The defect being jurisdictional the bonds are void. It cannot be remedied except in those cases where the legislature lends its aid by passing a legalizing act.
Defects which amount to but mere irregularities were deferred to this part, as they are usually accompanied by a recital. Such defects are caused by the carelessness or inadvertence of those appointed to exercise the power after it is granted by the legislature.

The question of the mere irregularity in the exercises of power usually arises in actions brought by an innocent holder for value, but it will not avail against him. The only defence open against such a holder is the want of power to issue the bonds.

When the question arises between the original parties, as between the municipality and the railroad company, or parties having notice, whether the condition on which the rightful exercise of power depends has been complied with, is open to inquiry, if no estoppel exists.

There are, at least, five ways mentioned by the courts and text-book writers by which a municipal corporation may estop itself from objecting to the validity of corporate securities. They are

1. Estoppel by recitals,
2. Laches,
3. Acquiescence,
4. Failure to enjoin the issue,
5. Payment of interest, and retaining the consideration.

I. Estoppel by recitals.

The common form of municipal bonds is a statement of the location of the obligor, and an acknowledgement of indebtedness to an amount expressed in the bond, and a promise to pay at some specified time and place, at a stated rate of interest, and pledging the faith and credit of the municipality charged to a punctual payment of both principal and interest. They are attested, signed, and sealed by the person or persons appointed to execute them. They very often contain additional recitals showing the object for which the bonds were issued; by what legislative authority, as, "An act to enable the several counties of the state to fund their floating indebtedness", or, "An act to aid in the construction of railroads", that all necessary conditions have been complied with, and describing the series comprising the issue.

The recitals in the numerous series issued in the different parts of the country are various. If the statute specifies some condition precedent the bonds usually recite that it has
been performed. As between the immediate parties and those having notice, it is a good defense; but how is it when they are held by an innocent purchaser? Conceding that the rightful exercise of the power to issue the bonds depends upon a condition precedent, for example, a popular vote in favor of the proposition, when, how, and by whom is it to be ascertained whether the condition precedent has been performed?

In the United States Supreme Court it was held that when the statute authorizes the county commissioners "to take stock in the railroad, payable in county bonds, such as had been issued, provided a majority of the qualified voters of said county, at a designated election, shall vote for the same," and the proper notices were omitted, the county commissioners were the proper judges whether or not the election had been properly held, and that the question could not be determined collaterly in an action upon the bonds or coupons, at least, when brought by a bona fide holder for value. The bond recited that it was issued in pursuance of an act of the general assembly of the state of Indiana. Knox County v. Aspinwall 21 How. 539,

See Lyons v. Munson 99 U. S. 634.

So held in New York in Town of Cherry Creek v. Becker 123 N. Y. 161.
"When legislative authority has been given to a municipality or to its officers, to subscribe for the stock of a railroad company, and to issue municipal bonds in payment, but only on some precedent condition, such as a popular vote favoring the subscription, and where it may be gathered from the legislative enactment that the officers of the municipality were invested with power to decide whether the condition precedent has been complied with, their recital that it has been, made in the bonds issued by them and held by a bona fide purchaser, is conclusive of the fact and binding upon the municipality, for the recital is itself a decision of the fact by the appointed tribunal."--Justice Strong in Coloma v. Evans 92 U.S. 484.

Recitals by officers invested with authority to determine whether precedent conditions have been performed, that the bonds have been issued "in pursuance of," or "in conformity with," or "by virtue of," or "by authority of" the statute, have been held, in favor of bona fide holders for value, to import full compliance with the statute, and to preclude inquiry as to whether the precedent conditions have been performed before the bonds were issued.

I Dillon Mun. Corp. p. 600 note I.

Lewis v. Commissioners 105 U.S. 739.
The reasoning sustaining the principle adopted would seem to lead to the logical conclusion that when the authority to issue depends on a previous vote in favor of the act, the public or municipal officers can, where no vote whatever has been taken, or the proposition has been defeated, bind the municipality by false recitals in such unauthorized bonds, provided they are issued by the officers entrusted with the power by the statute.

In states having statutes declaring bonds issued for more than a designated per cent. of the taxable property invalid, the courts hold that if the bonds are issued in excess of the statutory limit and contain recitals that they are issued in accordance with the statute, and a purchaser obtains them without notice of the overissue, the municipality is estopped from setting it up as a defence.


Judge Dillon says that "the purchaser may implicitly rely upon the recitals in the bonds made by the proper officers, that the authority to issue them has arisen, and that he is under no obligation to consult the records of the municipality, and is not charged with constructive notice of their con-
tents; and this, too, it will be observed, where the recital in the bonds was general and not specific in its nature, and where the facts which would have shown the issue of the bonds to have been illegal were matters appearing upon the public records of the township."

I. Dillon Mun. Corp. sec. 529.

This statement of Judge Dillon seems altogether too sweeping. There are cases limiting it to a great extent. These will be examined when considering of what the recitals charge the holder.

The courts go even further and hold that the corporation will be estopped from pleading a constitutional limitation, if the bonds recite that they are issued in pursuance of the constitutional provision and that it has been complied with.

Town of Coloma v. Eaves 92 U. S. 484,

Chaffee County v. Potter 142 U. S. 355.

But the municipality will not be estopped if the bonds contain no recital in regard to any limitation or if they show on their face that it is an overissue, or it can be readily ascertained by a simple arithmetical calculation.

Lake County v. Graham 130 U. S. 674,
Dixon County v. Field III U.S. 83,
Buchanan v. Litchfield 102 U.S. 278,
Doon Township v. Cunmins 142 U.S. 366.

2. Laches.

The equitable defence of laches is met with in those cases on this subject where a municipal corporation invokes the aid of a court of equity praying for a decree ordering the surrender and cancellation of their outstanding securities. Then the holder claims the protection of the old equity maxim, "Equity aids the vigilant and not those who slumber on their rights".

What constitutes laches as applied to public corporations may differ from the rule as applicable to natural persons. What would a fatal delay of the latter may not be serious in the case of the former. The reason is that the officers of public or municipal corporations do not guard the interests confided to them with the same vigilance and fidelity that characterizes the action of natural persons, or the officers of private corporations so, consequentially, their delay ought not to be laden with so serious results.
When the town of Andes, Delaware County, New York, brought an action for the surrender and cancellation of its bonds issued in aid of a railroad company, alleging that they were void because the proper consent of the taxpayers was not obtained, the court refused to exercise its equitable jurisdiction after an acquiescence and delay to bring the action for nearly ten years.

Calhoun v. Millard 121 N.Y. 69.

3. Acquiescence.

When the bonds of a public corporation are irregularly issued and the inhabitants of the locality charged ratify by submitting to taxation to pay interest, or vote taxes to pay principal, or in other ways sanction the validity of the bonds they are estopped thereafter from attacking their validity.

It was so held in Calhoun v. Millard, supra, when the town and taxpayers permitted the bonds to be dealt with and taken by savings banks and others for nearly ten years, not only without a word of warning or protest, but by affirmative acts of recognition, encouraged investment therein as safe and valid.
4. Failure to enjoin the issue.

Failure to enjoin the issue is made a separate branch of estoppel by Mr. Daniels and is referred to as such by Judge Dillon but the authorities cited mention it in connection with acquiescence.

Justice Clifford, in Rogers v. Burlington, 3 Wall. 667, says:

"Perfect acquiescence in the action of the officers of the city seems to have been manifested by the defendants until the demand was made for the payment of interest. They never attempted to enjoin the proceedings, but suffered the bonds to be issued and delivered to the company, and when that was done it was too late to object that the power conferred in the charter had not been properly executed."
5. Payment of interest and retaining the consideration.

Payment of interest and retaining the consideration is another division made by writers which seems to be an offspring of acquiescence. They cite Supervisors v. Schneck (supra) again for their authority.

On retention of consideration, note Justice Field's remark in Marsh v. Fulton County, 10 Wall. 684, "We do not mean to intimate that liabilities may not be incurred by counties independent of the statute. Undoubtedly they may be. The obligation to do justice rests upon all persons, natural and artificial, and if a county obtains the money or property of others without authority, the law independent of any statute, will compel restitution or compensation. But this is a very different thing from enforcing an obligation attempted to be created in one way, when the statute declares that it shall be created in another and different way."

See Calhoun v. Millard, supra.
Of what the recitals in bonds charge the holder.

A holder of bonds is bound to know what recitals they contain. The purchaser is bound to see that legislative power exists, not in conflict with the constitution, for the issue of the bonds of the municipality as well as for the recitals themselves.

If the bonds recite that they are issued in pursuance of a designated statutory or constitutional provision which limits the issue to a certain proportion of the assessed valuation and the bonds show the amount of the issue, the holder will be charged with knowledge of the overissue.

In Lake County v. Graham, 130 U.S. 674, the bonds showed on their face how many were issued and how large the issue was. It amounted to $500,000. The purchaser, having this data before him, was bound to ascertain from the records the total assessed valuation of the taxable property of the county, and determine for himself, by a simple arithmetical calculation, whether the issue was in harmony with the constitution; and the bonds, having been issued in violation of that provision of the constitution, were not valid obligations of the county.

See Chaffee Co. v. Potter, 142 U.S. at pp. 262-3.
In McClure v. Township of Oxford, 94 U.S. 429, bonds were issued under a statute which required that notice of election should be given at least thirty days by posting as specified in the act. Notices were posted for the thirty days but not for thirty days after the act went into effect, the election being held about nine days after the act went into effect. The bonds recited that they were issued in pursuance of this act. It was held that the bonds were void, that the holder was bound to know the law, and that, therefore, he must know when it went into effect. Chief Justice Waite said: "Every man is chargeable with notice of that which the law requires him to know, and of that which, after being put upon inquiry, he might have ascertained by the exercise of reasonable diligence. Every dealer in municipal bonds, which upon their face refer to a statute under which they were issued, is bound to take notice of the statute and of all its requirements."

If the instrument refers on its face to a statutory power, every holder is made chargeable thereby with notice of such statute and its limitations.

II. Daniels Neg. Inst. sec. 1550 sub. 6 and cases cited.
Who is a bona fide holder?

One who is deemed a bona fide holder of municipal bonds has the same legal position as a holder in good faith of any negotiable instrument. Municipal bonds are absolute, and not conditional, promises to pay, and hence are negotiable with all the incidents of negotiability, and persons who deal with them must consider them as such.


And the same principles of evidence apply in actions brought upon them. Smith v. Sac County I0 Wall. 139.

It was held in Cromwell v. Sac County, 96 U.S. 51, that an overdue and unpaid coupon for interest, attached to a bond which has several years to run, does not render the bond and the subsequently maturing coupons dishonored paper, so as to subject them, in the hands of a purchaser for value, to defenses good against the original holder. This case must be limited to its particular facts. It will probably not be extended. The bond was purchased with one coupon but little past due and on the statement of the vendor that all past coupons had been promptly paid and that the one then due would be paid in a few days.
If a purchaser has actual notice that the validity of the bonds is questioned or that a suit is pending affecting the title or validity of the securities, he will not be a holder in good faith, but purchasers are not chargeable with constructive notice.

County of Warren v. Marcy 97 U.S. 96,

Municipal bonds which are invalid in the hands of the original holder by reason of an irregularity in their issue to which he was a party, but which becomes valid in the hands of an innocent purchaser for value without knowledge or notice of the irregularity, remains valid when acquired by another purchaser for value, who was not a party to the irregular proceedings, but who, at the time of the purchase, has knowledge of the defect, and of a pending suit against the original holder and others to have the whole issue declared invalid.

Scotland County v. Hill, supra.