

REPORTS OF THE DECISIONS
OF THE
SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1881.

PROPERTY OF
UNITED STATES SENATE
LIBRARY.

WADE *v.* WALNUT.

The court adheres to the decision of the Supreme Court of Illinois declaring that the provision in the existing Constitution of that State entitled "Municipal subscriptions to railroads or private corporations" took effect July 2, 1870.

ERROR to the Circuit Court of the United States for the Northern District of Illinois.

This was an action brought by Wade against the town of Walnut, upon coupons cut from bonds purporting to be issued by the defendant, under the style of Township of Walnut, in the County of Bureau and State of Illinois. The declaration avers that each of the bonds contains, among other recitals, the following: "This bond is issued under and by virtue of the charter of said Illinois Grand Trunk Railway Company, and amendments thereto, and other laws of the State of Illinois, and in accordance with the vote of the electors of said township, at the special election held August 6th, 1870, in accordance with said charter and amendments and laws."

The defendant demurred to the declaration, and judgment was rendered in its favor. It is unnecessary to state the remaining facts, as the only question upon which this court passed was as to whether at the foregoing date there was in

force an article of the Constitution of Illinois which is as follows:—

“No county, city, town, township, or other municipality shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to, or loan its credit in aid of such corporation: *Provided, however,* that the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscriptions where the same have been authorized, under existing laws, by a vote of the people of such municipalities prior to such adoption.”

Wade sued out this writ of error.

Mr. Thomas S. McClelland and *Mr. George A. Sanders* for the plaintiff in error.

Mr. William C. Goudy and *Mr. Allan C. Story* for the defendant in error.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The only question we have to decide in this case is, whether the section of the Illinois Constitution adopted in 1870, relating to “municipal subscriptions to railroads or private corporations,” was in force on the 6th of August, 1870. This question came before the Supreme Court of the State at the January Term, 1872, only eighteen months after the Constitution was adopted, in *Schall v. Bowman* (62 Ill. 321), and it was then decided that this section took effect on the 2d of July, the day the people voted for its adoption. The opinion in the case was written by Mr. Justice Breese, two justices dissenting. At the September Term in the same year the same questions came again before the court in *Richards v. Donagho* (66 id. 73), and the opinion was then delivered by Mr. Justice Thornton, in the following words: “The only question presented by this record was, after mature deliberation, settled by the opinion in *Schall v. Bowman*. . . . Notwithstanding the able and plausible argument made in this case, the majority of the court adhere to the opinion in the case referred to above.” Afterwards, at the January Term, 1878, in *Wright v. Bishop* (88 id. 302), the court said: “Appellants make a very able and

interesting argument against the rulings in those cases; but we are not convinced they should be overruled."

This court has never until now been called on to decide the question, but in numerous cases it has assumed that the section took effect on the day fixed by the Supreme Court of the State. *Town of Concord v. Portsmouth Savings Bank*, 92 U. S. 625; *County of Moultrie v. Rockingham Ten-cent Savings Bank*, id. 631; *County of Randolph v. Post*, 93 id. 502; *Fairfield v. County of Gallatin*, 100 id. 47; *Walnut v. Wade*, 103 id. 683; *Louisville v. Savings Bank*, 104 id. 469. Under these circumstances we are not inclined to consider the question an open one here while the Supreme Court of the State adheres to its present rulings.

Judgment affirmed.

SWOPE *v.* LEFFINGWELL.

This court has jurisdiction to re-examine the judgment of a State court involving the right of a national bank to purchase a promissory note secured by a deed of trust upon real estate. A motion to affirm will, however, be granted where that is the only Federal question in the case and the decision below is in recognition of the right.

ERROR to the Supreme Court of the State of Missouri.

This was a suit brought in the Circuit Court of St. Louis County, Missouri, against Leffingwell and the other defendants, to restrain and enjoin the sale of certain real estate in the city of St. Louis, under a deed of trust executed to secure the payment of a promissory note whereof the Atlas National Bank of Boston became the purchaser. The case was ultimately determined by the Supreme Court of the State reversing the decrees of the subordinate courts, and directing that the bill be dismissed. Swope sued out this writ of error.

A motion was made to dismiss the writ for want of jurisdiction, upon the ground that there was no Federal question involved; to which was united a motion to affirm.

Mr. Philip Phillips in support of the motions.

Mr. E. B. Sherzer, *contra*.