

Statement of Facts.

with this case as it is now presented. The question here is whether the Denver & New Orleans Company would have the right to the relief it asks if there were no such contract, not whether the contract, if it exists, will be a bar to such a right. The real question in the case, as it now comes before us, is whether the relief required is legislative in its character or judicial. We think it is legislative, and that upon the existing facts a court of chancery can afford no remedy.

The decree of the Circuit Court is reversed, and the cause remanded with direction to

Dismiss the bill without prejudice.

DALLAS COUNTY *v.* McKENZIE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF MISSOURI.

Submitted January 16th, 1884.—Decided March 3d, 1884.

Evidence—Municipal Bonds.

Ralls County v. Douglas, 105 U. S. 728, relating to bonds in counties in Missouri issued in payment of subscriptions to railway stock, approved and followed. *Marcy v. Township of Oswego*, 92 U. S. 637, *Humboldt Township v. Long*, 92 U. S. 642, and *Wilson v. Salamanca*, 99 U. S. 499, relating to the validity of such bonds in the hands of a bona fide holder, approved and followed. When the records of a County Court show that orders for subscriptions to stock were made at adjourned and special terms at which all the judges were present, and that the last order was made at a regular term, it will be presumed, in the absence of anything to the contrary, that the adjourned and special terms were regularly called and held.

This was an action to recover the amounts due on interest coupons of municipal bonds issued in payment of a subscription for \$85,000 to railway stock. The bonds contained the following recital :

“This bond is issued pursuant to an order of the County Court of the county of Dallas, made on the 18th of May, A. D. 1871, and amended on the 19th of June, A. D. 1871, and on the 12th of August, A. D. 1871.”

Opinion of the Court.

There was no vote of the taxpayers of the county to authorize the subscription. The order of the County Court made on the 18th May, purported to be made at "an adjourned term." The record did not show how this became an adjourned term. It was assigned as error that "the Circuit Court erred in admitting in evidence the orders of the County Court of Dallas County over the objections of plaintiff in error."

Mr. John P. Ellis for plaintiff in error.

Mr. J. B. Henderson, Mr. Thomas C. Fletcher and Mr. Geo. D. Reynolds for defendant in error.

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

It is no longer an open question in this court that bonds issued by counties in Missouri, during the years 1870 and 1871, in payment of subscriptions to the stock of railroad companies without a vote of the people, are valid if the subscription was made under authority granted before the adoption of the Constitution of 1865 which did not require such a vote to be taken. In *Ralls County v. Douglass*, 105 U. S. 728, the cases in the Supreme Court of the State and in this court bearing on that question are referred to, and our conclusion distinctly stated. We there declined to follow the case of *State v. Dallas County Court*, 72 Mo. 329, decided in 1878, which substantially overruled a long line of cases in the Supreme Court of the State on which our earlier decisions were predicated.

In *Marcy v. Township of Oswego*, 92 U. S. 637, and *Humboldt Township v. Long*, Ib. 642, followed in *Wilson v. Salamanca*, 99 U. S. 499, it was expressly decided that municipal bonds were not invalid in the hands of a *bona fide* holder, by reason of their having been voted and issued in excess of the statutory limit, if the recitals imported a valid issue. It is an admitted fact in this case that McKenzie, the defendant in error, is a *bona fide* holder for value of the coupons sued on, and the recitals, which are almost in the exact language of those in *Wilson v. Salamanca, supra*, imply authority for the issue of the bonds from which they were cut. Consequently, in this case, the excessive issue is no defence.

Syllabus.

The records of the County Court which were put in evidence show affirmatively that all the justices were present and acting at the adjourned and special terms, when the orders were made directing the subscription to the stock and providing as to the terms of the contract. The last order was made at a regular term. Under these circumstances, it is certainly to be presumed, in the absence of anything to the contrary, that the terms were regularly called and held. It was, therefore, not error to admit the records in evidence without proof of the order for the adjourned term, or the call for the special term. The fact that the order of the 7th of August, 1871, is referred to in the recitals of the bond as having been made on the 12th, is unimportant. *Smith v. County of Clark*, 54 Mo. 58.

The judgment is affirmed.

UNITED STATES *v.* BRINDLE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF PENNSYLVANIA.

Argued January 18th, 1884.—Decided March 3d, 1884.

Office—Public Lands—Salary—Statutes.

A receiver of public moneys for a district of public lands subject to sale where the annual salary is \$2,500, is only entitled to retain from the military bounty-land fees received by him during his term of office sufficient, with his commissions on cash sales of public lands, to make up his annual salary. *United States v. Babbit*, 1 Black, 55, adhered to.

A receiver of moneys from the sale of public lands whose annual salary amounted to \$2,500, was also appointed agent for the sale of Indian trust lands under the treaty of July 17th, 1854, with the Delaware Indians, 10 Stat. 1048: *Held*, That he was entitled to commissions on the sales of Indian lands made by him, although they increased his annual compensation to a greater amount than \$2,500.

§ 18 of the Act of August 31st, 1852, 10 Stat. 100 [Rev. Stat. § 1763], which provided that “no person hereafter who holds or shall hold any office under the government of the United States, whose salary or annual compensation shall amount to the sum of \$2,500, shall receive compensation for discharging the duties of any other office,” did not forbid the allowance of extra