None of these documents are to be found in the public archives. No trace of the evidence on which these titles depend is exhibited in any of the records of that State. The consideration on which they were made have no reference to the colonization laws of Mexico. The promises of Micheltorena to Sutter, and through Sutter to the foreign volunteers, did not confer a title to any part of the public domain, nor perfect any incipient pretension into a vested interest. The parties looked to the contingency of a suppression of the revolt and the maintenance of the power of the Governor for the fulfilment of these promises. In this they were disappointed. The paper remained in the possession of Sutter for nearly fifteen months after the defeat and abdication of Micheltorena, before he gave a copy to Danbenbiss.

For these reasons, and others contained in the opinion of the court in the case of the United States *v.* Nye, it is the judgment of the court that the claim presented by the appellee is invalid. The decree of the District Court of the United States for the northern district of California is reversed, and the cause remanded to that court, with directions to that court to dismiss the petition.

THE WHITE WATER VALLEY CANAL COMPANY, APPELLANTS, *v.* HENRY VALLETTE AND OTHERS.

Bonds issued by a canal company, pledging the real and personal property of the company for the payment of the debt and interest, and containing other corresponding stipulations, will be treated by a court of equity as a mortgage, and enforced according to the intention of the contracting parties.

Bonds issued in payment for the completion of the canal were not usurious by the laws of Indiana, although they purport to be for a loan, and although the sum for which they were issued was largely greater than the estimated cost of the work.

The power to issue these bonds is derived from the charter of the company. Moreover, the contract was sanctioned by a special law of the State. And if the contract had been originally illegal, this law of the State would have prevented either party from setting up the illegality as a defence.

The decree of the Circuit Court, appointing a receiver, &c., is therefore affirmed.

THIS case originated in the Circuit Court of the United States for the district of Indiana.

It was a bill filed on the equity side of the court, by Vallette, a citizen of Ohio, against the White Water Valley Canal Company, a corporation created by a law of the State of Indiana. The whole suit was conducted according to the rules of a court of chancery. After the decree, the company prayed an appeal in open court, filed a bill of exceptions, which was allowed and signed by the district judge, and upon this a writ of error was sued out.

The nature of the contract and form of the bonds are set forth in the opinion of the court.

The heading of the bonds was as follows, viz:

UNITED STATES OF AMERICA,
State of Indiana.

$1,000. No. 18.

The White Water Valley Canal Company.

Canal Loan. Seven per cent. bond under the act of the General Assembly of the State of Indiana, entitled "An act to incorporate the White Water Valley Canal Company," January 20, 1842.

Know all men by these presents, that there is due from "the White Water Valley Canal Company" to Henry Vallette, or bearer, the sum of, &c., &c.

The case was was argued by *Mr. McLean* and *Mr. Stanbery* for the appellants, and *Mr. Swayne* and *Mr. Ewing* for the appellees. Upon this side there was also a brief filed by *Mr. Fox.*

The counsel for the appellant contended:

1. That there was no power to issue bonds which should claim priority, by way of mortgage, over all other creditors. They admitted the right of these bondholders to come in amongst the other creditors, but denied their claim to exclusiveness.

2. That the bargain was too hard, because the bonds were issued for twice the amount which had been expended in finishing the canal.

Upon the first point, they referred to the difference between

the original and amended bill filed by Vallette; the original having placed the transaction upon the footing of a loan under the 18th section of the charter, whilst the amended bill placed it upon the footing of a contract made for finishing the work. The power to mortgage was denied, because it included a power to sell, and in this case the company was a mere trustee created by the State to finish a work in which the State had already invested a million of dollars. The State reserved the right to redeem the canal upon certain conditions, which right was incompatible with a power in the company to mortgage and sell, and thus forever alienate the whole work. When sold, how could an individual purchaser carry it on? Could he exercise the power of eminent domain, of crossing public highways, and of making penal statutes necessary to continue the operation of the canal? Other parts of the charter were inconsistent with the alleged power of the company to sell out, or do anything which might lead to selling out, the whole concern. The grant of power in the 18th section carries with it an inference that the same power is not granted in any other section of the charter. The law of 1845, legalizing the bonds, was only intended to sanction the payment of seven per cent. interest, which is proved by that part of the preamble which says, "whereas doubts are entertained as to the legality of the issue of such bonds *under the present interest laws* of the State."

The contract was a very onerous one. In it there is nothing said about giving this debt a priority over all other debts; but Vallette appeared to look for his profit in the fact of receiving bonds for double the amount which it would cost to finish the canal. The company had already paid upwards of $75,000 upon account of these bonds, whereas the money expended by Vallette was only $56,000. At the most, there was only an agreement to give him a mortgage, which, not being executed, ought not to exclude other creditors whose claims are perfectly fair and *bona fide*. When the company made this bargain, it was in great straits for money, and Vallette took an unconscientious advantage of a necessitous debtor.

Authorities were adduced to sustain the following propositions, viz:

1. Corporations are strictly limited to the exercise of those powers which are expressly granted to them, or are necessarily incident either to the purposes of their existence, or to the proper enjoyment of their express powers.

2. An express grant of a specific power, in one section of a charter, is a prohibition against the exercise of the same power by implication from the provisions of another section.

3. The express grant of a specific power is *restrictive* in its operation, and not only must the occasion for its exercise arise, but the method and manner of its execution must be strictly adhered to, according to the terms of the grant, or its exercise is a nullity.

4th. A corporation may deny the validity of any contract which it may have entered into without authority for so doing under its charter. (4 Peters, 164; 2 Cranch, 127; 9 Howard, 172; 13 Peters, 518; 7 Ohio, part 1, 232; 8 Ohio, 252, 286, et seq.; 15 Johnson, 358; 2 Cowen, 678; 5 Connecticut, 560; 7 Wendell, 31; 8 Gill and Johnson, 248; 5 Barbour, 613.)

The points made by *Mr. Ewing* and *Mr. Swayne* were the following:

We will not discuss the question whether this is or is not a loan of money. It is a matter of no importance. Parties and counsel may give it what name they please.

I. Whatever be its name, the transaction is one which does not bring the case within the usury laws.

It is a contract to construct the canal at specified prices, and receive therefor payment in bonds of the company.

The work at the contract prices amounted to $112,000. It was paid for in the bonds of the company, according to the contract.

Much better terms could have been got, if the company had had cash to pay. But, in the exchange of work for bonds, it was the best that could be done.

There was no money passed between the parties in the transaction. Vallette did the work under a contract, and took a lien on the work to secure the payment of his bonds.

It is in equity just what the contract of a builder would be,

who should contract for a lien on the rents of the house which he should build, until paid.

And it would not interfere at all with the builder's equity, if he demanded a higher price, payable in bonds at a distant day, than if he were to be paid in cash; and especially if the payment for his work depended on the productiveness of the property covered by equitable mortgage, subject to loss by flood and fire. If we did but know how much it would have cost him to insure the claim, we might determine whether the contract was reasonable.

Until this matter is settled, as the agreement was made between parties entirely competent to contract, we must presume it to be so.

II. It is no matter whether this be a loan or not.

1. The corporation had a right by its general powers, independently of the 18th section, to make this contract, and to pledge the tolls, &c., of the canal for the payment.

It creates a lien that equity will enforce.

2. The contract comes within the reason and spirit of the 18th section. If the company is thereby authorized to pledge the tolls, &c., of the canal for the repayment of money borrowed to construct, it is also authorized to make the pledge for construction directly.

They may pledge for the loan, because it constructs the canal. It is a workman's lien. But instead of pledging to the contractor, the pledge is to the lender, whose money pays him. If the contractor furnish the money to pay himself, may they not pledge to him? To deny it would be a mere verbal criticism—a sticking in the bark.

III. But the act of January 4th, 1845, removes all possible difficulty, if there were any, after the contract was made and executed by Vallette; it sanctions the contract, and makes valid all bonds which shall be issued in pursuance of it.

If the company had not the power already to issue these bonds, their issue after the act is an acceptance of it.

Other points are made by the answers, but they are wholly unsustained by the testimony, and are not referred to in the brief for the appellant. We understand they will not be relied

upon in the argument at the bar. We deem it unnecessary, therefore, to advert to them.

In addition to the authorities cited in the brief of our colleague, Mr. Fox, we shall refer to the following:

1. James *v.* C. and H. R. R. Co., (6 Amer. Law Register, 718.) Where a charter directs the mode of exercising given powers, that part of the statute is *directory*, and a departure from the mode prescribed does not in any wise invalidate the acts of the corporation. See also the authorities cited upon this point in the opinion of the court.

2. Thompson *v.* N. Y. and H. R. R. Co., (3 Sandford Ch. Rep., 626.) "A corporation authorized by law to build a bridge at a given point may buy one already built at the same point, if suitable for their purpose." Syllabus.

3. Palmer *v.* Lawrence, (3 Sandf. Law Rep., 162.) "A party will not be permitted to rescind a contract, the fruits of which he retains, and can never be compelled to restore." Syllabus.

4. Steam Nav. Co. *v.* Weed, (17 Barbour, 378.) "Where it is a simple question *of capacity to contract*, arising either on a question of regularity of organization *or of powers conferred by the charter*, a party who has had the benefit of the contract, in an action founded upon it, is not allowed to question its validity." Syllabus. See also Sedgwick on Construction, p. 90.

5. This doctrine applies alike, whether the corporation or the individual contracted with be the party sought to be charged. (Moss *v.* Rossie Lead M. Co., 5 Hill, 137; Steam N. Co. *v.* Weed, 17 Barb., 378.)

The case last cited will be found to contain a very full collection and able analysis of all the leading authorities upon this subject.

Mr. Justice CAMPBELL delivered the opinion of the court.

This controversy originated in a contract between the appellants and the appellee, (Vallette,) in which the latter agreed to complete that portion of the canal through the valley of White Water river that lies between the cities of Laurel and Cambridge, in Indiana.

In the year 1836, the State of Indiana projected the improve-

ment of which this is a part, and prosecuted the work until 1842, at an expenditure of more than one million of dollars. In that year the appellants were incorporated, and the State surrendered the unfinished work to them, investing them with powers to continue it till its completion. In 1844 this corporation became embarrassed in their affairs, and were unable to negotiate loans upon the pledge of their property. Their resources were inadequate to the demands of their enterprise, and there was fear that it would be abandoned, or at least inconveniently postponed. In July, 1844, the president of the company applied to the appellee (Vallette) for assistance, and the result of their negotiation was, that the latter submitted a proposal to the company to supply materials and to complete at his expense the canal, according to the plan of the chief engineer, by the 1st of September, 1845, for one hundred and twenty-five bonds of the company, of $1,000 each, upon ten years' time, drawing interest at seven per cent. per annum, payable semi-annually, he (Vallette) to pay in the paper of the company $500 as a bonus.

This proposal was accepted, and a detailed contract was drawn out and executed, embracing some modifications not material to this dispute. The appellee agreed to construct in a substantial and workmanlike manner the sections of the canal, under the directions of the chief engineer, and according to particular specifications. The engineer was to decide whether the work had been performed agreeably to contract and the instructions of the engineer; and payment was to be made upon his certificate of the work done at the end of every sixty days. The contract was punctually performed by the appellee to the satisfaction of the company, and upon a final settlement one hundred and sixteen bonds of $1,000 each were issued to him, one hundred and twelve bearing date the 1st of February, 1845, with interest at the rate of seven per cent. per annum, payable semi-annually at New York, the principal to be paid at ten years from date. These bonds contain recitals and stipulations as follows: That the principal sum is the first and only loan created by the company under their charter for the completion of the canal; that the faith of the company and

their effects, real and personal, are pledged for the payment of the debt and interest; that these bonds shall have a preference over all debts to be thereafter contracted; that in default of the payment of interest, the holder of the bonds might enter into possession of the tolls, water rents, and other incomes of the company; and might apply to any court of the State (Federal or State) for the appointment of a receiver, and that the company would not appeal to any other court; that they would pay ten per cent. as liquidated damages on the amount of the interest thus collected. The interest on these bonds was paid until August, 1854, since when the corporation has been in default.

The appellees hold the one hundred and twelve bonds above described, and have filed this bill to enforce the covenants they contain by the appointment of a receiver. They allege that the company is insolvent; that its stock has no value, and that the canal is exposed to dilapidation and ruin, and they have no ability to remedy such disasters.

The defendants resist the demand of the appellees. They aver that the president of the company applied to Vallette for a loan of money; that Vallette was willing to advance the sum required, if he could make a profit of one hundred per cent., and the president and directors were ready to concede this profit. That the contract was made between them as a device and contrivance to evade the laws of Indiana upon the subject of interest and usury, and that the contract between the parties in its essence and spirit was a loan of money at that exorbitant and usurious rate of interest. That the work was done by the company through the superintendence of their engineer, and that Vallette paid out the money to contractors merely to secure its appropriation to the improvement of the canal to strengthen his security. That the amount expended was but $56,000, and the estimates of the engineer prior to the making of the contract did not exceed $65,000; and that the contract was arranged so that the profit of one hundred per cent. might be realized.

They complain that the exactions of the appellee were exorbitant and oppressive. That the canal has been exposed to

disasters from heavy floods, and a debt has been created for reparations and improvements that is superior in dignity and merit to that of the appellee, and that he had waived his preference to induce them to make the advance.

In the absence of objections to the validity of these bonds, there can be no question concerning their legal operation and effect, or of the jurisdiction of a court of equity to enforce them. That court treats an agreement for a mortgage or pledge of bonds, or other property, as binding, and will give it effect according to the intention of the contracting parties. (Duncan *v.* The Company of Proprietors of the Manchester Water Works, 8 Pri., 697; Fector *v.* Philpott, 12 Pri., 197; Seymour *v.* Canandaigua and N. F. R. R. Co., 25 Barb., 284.)

In Fripp *v.* Chard Railway Company, (21 Law and Eq., 53,) the Vice Chancellor decided that the court of chancery might appoint a receiver of the property of a corporation created by act of Parliament in favor of a mortgagee, although by the act a committee was constituted to whom all the powers of management were referred. And at the present term of this court a receiver for the tolls of a bridge erected by a corporation in Indiana was allowed by this court in favor of a judgment creditor, whose legal remedy had been exhausted. (Covington Drawbridge Company *v.* Shepherd, 21 How.)

The question then arises, whether the contract between these parties, as disclosed by the pleadings and proofs, is valid. It is essential to the nature of usury in Indiana, that a certain gain exceeding the legal rate of interest should accrue to the lender as a consideration for the loan. Where there is no loan there can be no usury. (State Bank *v.* Coquillard, 6 Ind., 232.)

And where there is a loan, although the profit derived to the lender exceeds the legal rate, yet if that profit is contingent or uncertain, the contract, if *bona fide* and without any design to evade the statute, is not usurious. (Cross *v.* Hepner, 7 Ind., 357.)

The testimony does not support the averment of the answer, that this contract involved a device or contrivance to elude the prohibition of the statute. The president of the corporation (Mr. Helm) testifies: "I know nothing of any such device or

arrangement; I thought it was all right; and there was none, so far as I know or believe, to evade the usury laws of Indiana; nor was there any device or arrangement to cover up a loan of money from Vallette to said company, as I know of no such loan." The testimony of the solicitor of the corporation, (Mr. Parker,) who superintended all the negotiations, and drew the papers, is equally explicit. He says: "I am satisfied there was no device or management had or intended between said Vallette and the canal company, in the matter of this contract or otherwise, whatever, in this connection, to avoid any usury laws of the State of Indiana, or any other State. I never thought of such a thing myself, and never had an intimation of it from any other source; and had there been anything of the kind, I would certainly have known it, as I have said the whole matter in every shape it assumed was presented to me for my consideration. Vallette had all the risk of his contract on his own hands, until completed and taken off his hands by the company. And I have a strong impression in my own mind, that in one if not more instances he suffered by that risk in consequence of damage done his work, while in progress, by high waters." In the absence of simulation in the contract, the reason assigned in the last sentences quoted from the testimony of this witness is conclusive on the question of the usury. These witnesses are sustained by their fellow-members of the board. The recital in the bonds, that this was a loan, is explained by the fact that the form of the bonds was settled after the work was finished, and with reference to their negotiability in New York, and the contract was regarded with favor by the corporation, and the payment of interest was made without exception for several years. It is admitted that the contract provided prices for the work done far exceeding the cash estimates of the engineer. This, the witnesses say, was the natural consequence of the embarrassment of the company and their want of credit. But they prove that the proposal of Vallette was understood and considerately examined; that it was adopted by the board, with only one dissentient vote; that its conditions were performed in good faith by the appellee, and that the final settlement between the contracting parties was

amicable. There was on the part of the appellee no fraud or circumvention.

These facts oppose an insuperable bar to any relief from the contract on the ground of lesion or oppression. (Harrison *v.* Guest, 35 Law and Eq., 487.)

The remaining question for consideration is, whether it was competent for this corporation to execute such securities as these bonds in fulfilment of their covenants in a construction contract, fairly made and executed by the other party. The first section of the act of incorporation endows the corporate body with faculties for suits, contracts, and all other things legitimate for such company to do; and "all the powers and privileges in any wise necessary and expedient to carry into effect the proper business" of the association. The seventeenth section establishes the president and directors as the governing body, and that "their regular and efficient doings not inconsistent with this charter" "shall in all cases be deemed the doings of the company, and forever held valid as such."

The 18th section invests them with "full power to negotiate any loans that may be deemed expedient for carrying out all the objects contemplated by this act; and for the payment of such loans, agreeably to the terms agreed upon, said company shall bind themselves by their bonds, which bonds," &c., &c., &c., "shall be a valid lien upon all the stock and effects of said company in the order of their issue, and all the effects of the company, both real and personal, shall be deemed and taken as a pledge for the punctual payment of the interest on said bonds, and the ultimate redemption of the principal, agreeably to contract.

It is well settled that a corporation, without special authority, may dispose of land, goods, and chattels, or of any interest in the same, as it deems expedient, and in the course of their legitimate business may make a bond, mortgage, note, or draft; and also may make compositions with creditors, or an assignment for their benefit, with preferences, except when restrained by law. (Partridge *v.* Badger, 25 Barb., 146; Barry *v.* Merchants' Ex. Co., 1 Sand. Ch. R., 280; Burr *v.* Phœnix Glass Co., 14 Barb., 358; Dater *v.* Bank of the U. S., 5 W. and

S., 223; Frazier *v.* Wilcox, 4 Rob., 517; U. S. Bank *v.* Huth, 4 B. M., 423; The State *v.* Bank of Md., 6 G. and J., 323; Pierce *v.* Emery, 32 N. H., 486.)

But, in addition to the general powers of the corporation, in this instance there is "*full power*" (specially conferred) to negotiate any loan or loans that the company might deem expedient for carrying out any or all of the objects of the act. We should find great difficulty in deciding that the corporation was restrained by the laws concerning interest and usury, in view of the comprehensive language of the 18th section of the act. Those laws rest upon considerations of policy applicable, for the most part, to individuals engaged in their ordinary business; and the Legislature might well conclude that a numerous body, engaged in a public enterprise, under the direction of an intelligent board, might be trusted with a plenary control of their property or credit, to accomplish the aim of the association.

If the rights of the appellees depended upon the act of incorporation alone, it would be difficult to resist them. But, in January, 1845, the Legislature of Indiana passed an act, that recites the corporation had entered into a contract with Vallette to complete the canal, and was to be paid in their bonds, drawing the legal interest in New York, and doubts were entertained as to the legality of the issue of these bonds; and thereupon it was enacted, that all the bonds which might be issued in accordance with the contract existing between the company and Vallette were *legalized*. A large portion of the work specified in the contract was performed after this enactment, and the settlement under which these bonds were issued took place subsequently. This act implies that there was no illegality in the fact that bonds were employed as a medium of payment for supplies of materials for, or work and labor done upon, the canal.

The objection that a contract is illegal, and that no judgment can therefore be rendered upon it, is not allowed from any consideration of favor to those who allege it. The courts, from public considerations, refuse their aid to enforce obligations which contravene the laws or policy of the State. When the

Legislature relieves a contract from the imputation of illegality, neither of the parties to the contract are in a condition to insist on this objection. (Andrews *v.* Russell, 7 Black., 475; 8 Ind., 27.)

Upon a review of the whole case, it is the opinion of the court that the contract between these parties was made without fraud or surprise; that there is no illegality in the cause, or consideration; that the priority of payment has not been released or defeated; and that the relief sought is within the competency of a court of equity to allow.

Decree affirmed.

ALTON R. EASTON, PLAINTIFF IN ERROR, *v.* THOMAS L. SALISBURY.

Between May, 1829, and July, 1832, there was an interval in the acts of Congress reserving lands from sale which were claimed under Spanish concessions in Louisiana; and during this interval, an entry or patent for any of these lands would have been valid.

But a patent issued in 1827, whilst the reservation was in force, was void, and the patent did not become operative *proprio vigore* during the interval between 1829 and 1832.

The confirmation of the concession in 1836, therefore, gave a good title to the claimant under the concession.

Moreover, the New Madrid warrant, not being located within one year from the 26th of April, 1822, was void.

THIS case was brought up from the Supreme Court of Missouri by a writ of error issued under the 25th section of the judiciary act.

It was a petition in the nature of an ejectment brought by Easton against Salisbury in the St. Louis Court of Common Pleas, to recover the lots described in the opinion of the court. The Court of Common Pleas gave judgment for the defendant, and this judgment was affirmed by the Supreme Court.

The plaintiff claimed under a New Madrid patent issued in 1827, and the defendant under a Spanish concession which was confirmed in 1836. The Supreme Court of Missouri