PER CURIAM.—Let this appeal be dismissed. It has not been prosecuted in the manner directed nor within the time limited by the Act of Congress, which requires that the transcript shall be filed at the next succeeding term after the appeal is taken

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MORAN ET AL. *vs.* THE COMMISSIONERS OF MIAMI COUNTY.

1. Acts of incorporation and other statutes granting special privileges are to be construed strictly, and whatever is not given in unequivocal terms is withheld.
2. But this principle must be applied with reference to the subject matter as a whole, and not in such manner as to defeat the general intent of the Legislature.
3. A county or other municipal corporation being authorized by statute to borrow money and issue bonds for the payment thereof, if the bonds be made and delivered reciting the facts, which show them to have been regularly issued, the county is estopped to deny their regularity or to assert that they were not made in conformity to the statute.
4. Such bonds, with interest warrants annexed, are commercial securities; the holder of them has a full title; and as against one who has taken them in good faith, the county cannot set up the equities which might have been available against the original payee.

Error to the Circuit Court of the United States for the District of Indiana.

Mr. Porter, of Indiana, for Plaintiffs in Error.

Mr. Ross, of Indiana, *contra.*

Mr. Justice WAYNE. This cause has been fully argued. It is an action to recover the interest in arrears on coupons annexed to bonds which were issued by Miami County, payable to the Peru and Indianapolis Railroad Company, or bearer, and which is declared in the bonds to be given for a loan of money. We

are relieved from the task of considering several of the arguments of counsel and the pleadings on the record, believing, as we do, that the defendants are estopped from denying the declarations as to the purpose and cause for which the bonds were issued, and that the coupon holders had a right to infer from the face of the bonds that they had been regularly issued by the County of Miami.

It is not a new case to this Court, either in its facts or the principle involved. The object of this Court has been in cases of a like kind, and it is still its purpose, to give to the contracts of counties for the purchase of railroad stocks and for borrowing money, to aid in the construction of railroads and other internal improvements, a strict interpretation of the legislative acts empowering them to do one or the other; but at the same time to give protection to the *bona fide* holders of such contracts as have been put on sale in the money market, by corporations or by counties acting corporately, against their efforts to be relieved from the responsibilities of official acts, in putting such papers into circulation, for capitalists to invest money in them, on assurances that the principal and interest would be paid accordingly.

We repeat now, as appropriate to the subject-matter of the case in hand, as it was in the case in which this Court said it, that corporations are as strongly bound as individuals are to a careful adherence to truth in their dealings with mankind, and that they cannot by their representations or silence involve others in onerous engagements, and then defeat the calculations and claims their own conduct had superinduced. *Zabriskie* vs. *Cleveland, Columbus and Cincinnati Railroad Company*, (23 How., 400). In our construction of the Act of Pennsylvania to incorporate the Northwestern Railroad Company, the Court said, that neither privileges, powers, nor authorities, can pass, unless they are given in unambiguous words, and that an act giving special privileges must be construed strictly. That in case a sentence is capable of having two meanings, a construction must be given favorable to the public. However, that in applying those principles of construction, it must be done with reference to the

subject-matter contemplated by the Legislature as a whole, so as not to allow its manifest purpose and design to be defeated by denying the use of means by which the main object could only be accomplished.

In our leading case upon the subject, that of the *Commissioners of Knox County* vs. *Aspinwall et al.*, (21 How., 539), the suit having been brought for the interest due upon coupons annexed to one hundred and forty-two bonds, in which the main ground of defence was, that a Board of Commissioners had not power to execute them, and that on such account they were not binding upon the County of Knox, our answer and judgment was, that the bonds on their face import a compliance with the law under which they were issued; and that the purchasers of them were not bound to look further for evidence of a compliance with the conditions annexed to the grant of power to issue them.

In confirmation of such conclusion we then cited the case of the *Royal British Bank* vs. *Tarward*, (6 Ellis & Blackburne, 327), decided in 1856 in the Exchequer Chambers, in error from the Court of Queen's Bench, the decision of which we will now give in full, on account of the principle and its peculiar application to the pleadings in the case before us. Jervis, C. J. "I am of the opinion that the judgment of the Court of Queen's Bench ought to be affirmed. I am inclined to think the question which has been principally argued, both here and in that Court, does not necessarily arise, and need not be determined. My impression is, though I will not state it is a fixed opinion, that the resolution set forth in the replication goes far enough to satisfy the requisites of the deed of settlement. The deed allows the directors to borrow on bond such sums of money as shall, from time to time, by a resolution passed at a general meeting of the Company, be authorized to be borrowed, and the replication shows a resolution passed at a general meeting authorizing the directors to borrow on bond such sums for such periods and rates of interest as they might deem expedient, in accordance with the deed of settlement and the Act of Parliament; but the resolution does not otherwise define the amount to be borrowed. That seems to me to be enough. If that be so, the other ques-

tion does not arise. But whether it be so or not, we need not decide, for it seems to us that the plea, whether we consider it a confession and avoidance, or a special *non est factum*, does not raise any objection to the advance as against the Company. We may here take for granted that the dealings with these companies are not like dealings with other partnerships, and that the parties dealing with them are bound to read the statute and deed of settlement. But they are not bound to do more. And the party here, on reading the deed of settlement, would find, not a prohibition from borrowing, but a permission to do so on certain conditions. Finding that the authority might be made complete by a resolution, he would have a right to infer the fact of a resolution authorizing that, which on the face of the document, appeared to be legitimately done."

At an ensuing term of this Court we had under consideration the case of *Bissell* vs. *City of Jeffersonville*, and it was fully discussed by us in connection with the English and our own case of Aspinwall, &c. We said there: "When the contract has been ratified and affirmed, and the bond issued and delivered to the Railroad Company in exchange for stock, it was then too late to call in question the fact determined by the Common Council —and, *a fortiori*, it is too late to raise that question in a case like the present, where it is shown that the plaintiffs are holders for value. Certified copies of the proceedings were exhibited to the plaintiffs at the time they received the bonds, &c., and whether we look to the bonds or recorded proceedings, there is nothing to indicate any irregularity, or to raise a suspicion that the bonds had not been issued pursuant to lawful authority. We hold that the Company and its assigns, under the circumstances of the case, had a right to assume that they imported verity." It would be difficult to find cases more controlling of that before us than those which have just been cited.

The same ruling was made by the Court in the case of the *Commissioners of the County of Knox* vs. *Wallace*, (2 How., 546) It was substantially repeated in *Aspinwall et al.* vs. *The Commissioners of the County of Davis.* That was brought to this Court from the Circuit Court of Indiana upon a certificate of a

division of opinion between the judges. The points were, whether by the Act of Incorporation of the Ohio and Mississippi Railroad, and the amendments to it of January, 1849, any right to county subscriptions had been vested in the Company, to exclude the operation of the Constitution of Indiana, which took effect on the 1st of November, 1851, and whether the Railroad Company had acquired any such right to subscription of the defendant as was protected by the Constitution of the State. Both questions were answered negatively. But we said it was done reluctantly, for the subscriptions to the stock by the Board of Commissioners were made in good faith to the Railroad Company, and also sold by it, and purchased by the plaintiff in confidence of their validity.

With these cases on our minds, we will now proceed to give the facts and circumstances of the present case, that it may be seen whether there is any thing in them to take it out of our decisions.

The abstracts of it by both counsel, are so similar that either may be used without giving to the other any advantage.

It is an action of assumpsit, brought by the plaintiff in error, on interest warrants or coupons, annexed to fifteen bonds of the county of Miami for $1,000 each, bearing date the 21st of August, 1851, redeemable in ten years from the 1st of September following. The bonds were payable to the Peru and Indianapolis Railroad Company, or bearer, at the office of the Treasurer of Miami County, in Peru, bearing an interest of ten per cent. per annum, payable semi-annually at the same place. The suit is for a failure to pay coupons for the years 1857 and 1858, amounting to $3,000, the interest accrued before having been paid by the Railroad Company. It is averred in the declaration that the bonds had been issued by Miami County, in pursuance of powers conferred on its Board of Commissioners by the laws of Indiana, and particularly by an Act approved January 6th, 1849, entitled an Act to authorize the Commissioners of Hamilton, Miami, and Tipton Counties to borrow money. Howard County was afterwards permitted to borrow money. The language of the act authorizes the loaning of

money to the Board to any amount not exceeding $50,000, from time to time, at any rate of interest, not more than ten per cent. per annum. The second section is, that all persons loaning money to the counties or either of them, are authorized to receive any rate of interest upon such loans as may be agreed upon, not exceeding ten per centum.

The Peru and Indianapolis Railroad Company was incorporated in January, 1846. The 28th section of the charter authorizes the County Commissioners of each county through which the road shall pass to take, by an order for either county, as much stock in it as they may think proper. After the act permitting the counties to borrow money had been passed, the Railroad Company, urged by the condition of its finances, appointed a committee to apply to the auditors of the Counties of Hamilton, Miami, and Howard, to call special sessions of the Boards of the Commissioners of their respective counties to consider proposals which they wished to make. In a meeting afterwards held, the committee stated that they were required to ask from the counties additional subscriptions to the stock of the Railroad Company. From the Counties of Hamilton and Miami respectively, twenty thousand dollars, and from Howard County ten thousand dollars. The committee then said that their subscriptions would be received, if the respective counties would issue bonds bearing ten per cent. interest per annum, redeemable in ten years, with coupons annexed to them, which the railroad would receive if the bonds were made payable to the company, or bearer, for the purpose of borrowing money upon them, to be applied to the payment of the stock which either of the counties should subscribe for. As a further inducement to the counties to do so, the committee stated that upon the subscription being made, and the bonds being issued, that the Railroad would issue stock to the county for its subscription, credited in full to the amount of its bonds; and for the issue of the bonds, that the President of the Railroad would execute an obligation binding the company to pay the interest annually upon the bonds as it became due, until the principal became payable and then the principal also; but that when

both principal and interest had been paid by the Railroad Company, that the counties would return to it the stock certificates which they had received when the bonds were issued if it did not wish to retain it. And it was further agreed between the parties, if the counties, or either of them, should at any time before the redemption of the county bonds by the railroad company elect to surrender to it its obligation, and assume the payment of the interest that shall accrue afterwards, and the principal also when it became due, that the stock issued to the counties should become absolute in their favor, entitling them to all future dividends on the stock. But that until such assumption had been undertaken and performed, that the stock was merely to be held as a security by the counties for the performance of the stipulation of the Railroad Company, but not entitling them to dividends, though it would give them the right to vote the stock in elections for directors. These proposals were considered by the Auditor and Board of Commissioners of Miami County. It resulted in an issue by them of twenty bonds, one thousand dollars each, in which it is declared in the bonds "that there is due to the President and Directors of the Peru and Indianapolis Railroad Company, or bearer, one thousand dollars from the County of Miami, payable in ten years from the first of September, 1851," this bond being issued for a loan of the amount to the county, as authorized by an act of the State of Indiana, permitting the Commissioners of Hamilton, Miami and Tipton Counties to borrow money. The coupons or interest warrants annexed to the bonds are in these words:

AUDITOR'S OFFICE, *Miami County, Peru, Indiana.*

The Treasurer of said county will pay the legal holder hereof one hundred dollars on the first day of September, 1857, on presentation thereof, being for interest due on the obligation of said county, No. 16, given to the Peru and Indianapolis Railroad Company. By order of the Commissioners.

IRA MENDENHALL, *County Auditor.*

The interest warrants, payable on the 1st September, 1858, are like the preceding; and others of the same kind, are annexed to the other fifteen bonds legally held by the plaintiff in error.

The bonds were delivered to the Railroad Company, were received by it in payment of the certificate of stock, and the County of Miami was credited with $20,000 upon the certificate The Railroad Company then offered them for sale, transferred them to purchasers as commercial securities by endorsement, and the plaintiff in error bought them in the full confidence that the consideration for which they had been issued was truly expressed on the face of the bonds. The county retained the stock certificate and voted it on the election for directors as its own. Thus matters stood between the Railroad Company and the County of Miami, both being satisfied with what had been done, and that they had acted conformably to their respective powers, until the Railroad ceased to pay to the holders the interest warrants.

Upon the trial of the case, the defendants filed a plea of non-assumpsit, and the plaintiff joined issue by a similiter. At the same time the defendants put in several pleas, affirming that several irregularities had been committed by the Board of Commissioners of Miami County and the Railroad Company, in their negotiation and proceedings for the issue of the bonds and interest warrants, by the force of which it is declared that the bonds were void at law, and that they were purchased by the plaintiff with notice of these irregularities.

We have examined these pleas critically, and find the facts stated in each to be imputations, only calculated to raise supposed equities between Miami County and the Railroad Company, in which the plaintiffs in error, as the legal holders of the bonds and coupons, can in no event have any concern, even if it be admitted that they had notice of such irregularities when they bought, as all of them relate to circumstances contradictory to the declarations upon the face of the bonds.

Though the proposals, or contract as it is termed in the record, for additional subscriptions of stock are confusedly expressed, there can be no doubt that it was its intention to solicit subscriptions, and that it was so understood by the Board of Commissioners of Miami County when it issued the bonds; and that in furtherance of such purpose, the parties proceeded to devise the

means to pay for the subscription by borrowing money. In doing that there was nothing irregular in the transaction. Both parties seem to us to have acted within their respective powers: the Railroad within its charter to allow the counties to subscribe for stock in it, and the County of Miami to do so and according to the power given to it to borrow money. When the Railroad undertook to pay the interest upon the treasury bonds and the principal also when that became due, it was substantially a loan to the county from the time of the execution of the bonds until their maturity, though it was provided that the county might then upon the cancellation of these bonds decline to return the certificate of stock which had been issued to it.

The narrative of the negotiation which led to the issue of the bonds and interest warrants, brings the case, by the declaration in the bond as to the object and purpose for which they were issued, so entirely within what we have shown to be the law in such cases as to the inference which may be made from the face of the bond, of its having been regularly executed by the party having authority to do it, that we are relieved from the task of considering much of the argument made to us by counsel; and from examining the special pleas which were put in by the defendant, or the reasoning of the Court upon the third and fourth pleas upon which it rested its judgment for the dismissal of the plaintiff's case. If the contract and bonds are considered in connection with the authority of the Board of Commissioners of Miami County to issue them, it must be obvious that several of the points presented to us by the counsel of the defendant do not arise in the case. For instance, whether the Board of Commissioners of Miami County had power to issue them at the time and for the purpose for which in was done, or that the bonds and interest warrants, by having been endorsed to the plaintiff by the Railroad Company were subjected to the revised statutes of Indiana, making certain promissory notes, &c., negotiable by endorsement thereon, so as to vest the interest in the contract to the assignee, and permitting the obligor to set up any defence to the obligation against the assignee, that he could have done against the original obligee. or that it was necessary to them

that the bonds were issued by virtue of a special statute, and if that did not exist, that the bonds may be held to be void.

It is true that all of these points were as well argued by the counsel of the defendants as the circumstances of the case permitted, but in every instance, either of argument or of pleading, the point of estoppel, as made by the plaintiff's counsel in the Court below, and renewed here by him with vigor by the citation of many cases, was not directly met by the counsel of the defendant. The first point of the plaintiff's counsel was, that even if the bonds had been issued irregularly, and not in strict conformity with the power of the county to borrow money, that the defendant is, nevertheless, estopped by the bonds themselves, which, on their face, express that they were issued for a loan of the amount to the county, as authorized by the Act of the General Assembly to borrow money, and that such bonds being habitually received and passed as commercial securities, and being *bona fide* in the hands of the plaintiff, that they were entitled to recover the amount of interest sued for, notwithstanding there might be equities between the original parties to the transaction. It is not necessary for us to follow out the plaintiff's argument in this particular, thinking it, as we do, conclusive. We think that the bonds in this case, with interest warrants annexed, are commercial securities, though they are not in the accustomed forms of promissory notes or bills of exchange; that the parties intended them to be passed from hand to hand to raise money upon them, so that a full title was intended to be conferred on any person who became the legal holder of them, and that the original maker under such circumstances has no equity to prevent the recovery of the interest.

But the real point in this case, as made by the counsel of the plaintiff in error, and sustained in argument by numerous adjudicated cases, was, that as it is declared in the bonds that they were issued by the Board of Commissioners of Miami County by order or resolution, pursuant to the statute authorizing the County to borrow money, passed at a regular meeting of the Board, to be used by the Peru and Indianapolis Railroad, payable to the Company, or bearer, for a loan to the County that

the *bona fide* holders of the bonds, whether so by endorsement or delivery, had a right to infer that the bonds had been lawfully issued, by which the County of Miami is estopped in a suit for the recovery of the interest from denying by pleas that its bonds had been issued to the Peru and Indianapolis Railroad for a loan of money to the County of Miami. We think and adjudge that the recitals in the bonds are conclusive, constituting an estoppel in pais upon the defendants in this suit. In support of this conclusion, we cite the following cases: *Girard* vs. *Bradley*, (7 Ind., § 600); *Reeves* vs. *Andrews*, (Ibid., 207); *Frances* vs. *Porter*, (213); *May* vs. *Johnson*, (3 Ind., 448); *Trimble* vs. *State*, (4 Black, 435); (8 Blackford, 258); *Ryan* vs. *Vanladingham*, (7 Ind., 416; 24 How., 375); (23 How., 381); (29 Connecticut Rep.); *Society of Saving* vs. *City of New London*, (103); (1 Vesey, senior, 123, 8 Blackf., 47). It is the opinion of this Court that the defendant is estopped from setting up the defences taken as set forth in the transcript of the record of this case, and that the judgment of the Court below sustaining the demurrer should be, and is hereby reversed and annulled, and that the case should be remanded to that Court, with directions to award a *venire facias de novo.*