against the private property of any individual inhabitant, giving him the right to claim contribution from the rest of the people.

It is said that this practice prescribed for the State courts of Iowa has not been adopted by the United States circuit for that district, and hence that it is not competent for the court in the present instance to follow this mode of proceeding. But the answer is that the court having charge of the cause under the act of 1839, is fully competent to adopt it in the particular case, as its power is the same over it as if it had been a suit originally brought in the court.

JUDGMENT AFFIRMED.

Mr. Justice MILLER did not sit in this case.

LEE COUNTY *v.* ROGERS.

1. The principle of law held by this court in *Gelpcke* v. *The City of Dubuque*, (1 Wallace, 176-223)—the principle, namely, that bonds, issued by counties, cities, or towns, in Iowa, to railroad companies, for stock in such companies; and which said bodies, at the time the bonds were issued, were held, by the settled adjudications of the highest courts of the State, to possess full power, under its constitution and laws, to issue the same, are ever after valid and binding upon the body issuing them, in the hands of a *bonâ fide* holder, although the same courts may subsequently reverse their previous decisions—is not open for re-examination in this court.
2. The doctrine of *lis pendens* has no application to a case where there were three distinct and independent suits, with an interval of one year between the first and second, and of two years between the second and third.

IN error to the Northern Circuit Court of Illinois.

Rogers brought suit against Lee County, Iowa, upon the coupons of certain bonds signed by one Boyles, county judge, issued by the county under the county seal, to a certain railroad company named.*

* The suit was originally brought in the Iowa circuit, but like the last one was transferred to Illinois. The preceding case renders further allusion to this fact unnecessary.

The defences, as appearing on answer and amended answer, were:

1. That the bonds were issued and executed by Boyles, county judge, &c., "without any authority of law, having been issued for the purpose of subscribing on behalf of this defendant to the stock of certain railroad corporations, which the defendant had no power or authority to do," and that they were "utterly null and void from the beginning."

2. That a bill had been filed by McMillan and others, taxpayers of Lee County, against Boyles, the county judge, &c., on the 1st October, 1856, in a State court, before any bonds were issued, and that he was enjoined, on account of irregularities in preliminary proceedings, at the December Term, 1856, against issuing the bonds; that soon afterwards, in January, 1857, the legislature passed an act confirming and legalizing these proceedings; that a second bill was filed, by the same parties, on the 26th February, 1859, a year after this act of the legislature, for the purpose of having both the act, and also the bonds, which, in the meantime, had been issued, declared void, and that on the 22d June, 1858, a decree was rendered, declaring both the act and the bonds valid and binding; that a third bill was filed, which was a bill of review of the previous case, on the 28th July, 1860, two years after the previous decree, and that on the 18th October, 1862, a decree was rendered declaring the act of the legislature, and bonds, void and of no effect.

The defence meant to be set up by this second head was, of course, that of *lis pendens*.

The defendant demurred, and the court below sustaining the demurrer, the case was now brought here by the county.

It was submitted by Mr. McCrary, on elaborate briefs of his own, and of Messrs. Semple and Casey; and by Messrs. Dick and Grant, on similar briefs of theirs.

Mr. Justice NELSON delivered the opinion of the court.

The defence is placed, by the learned counsel for the defendant, in his brief, upon two grounds:

Opinion of the court.

1. That the county is not liable, on the bonds or coupons, for the reason there was no power in the county to subscribe for the stock, to the railroad company, or to issue the bonds; that they are void, as against the constitution and laws of the State.

2. That prior to the date of the bonds and coupons, certain suits were instituted, in the District Court of Lee County, impeaching the validity of the bonds, if issued, and charging that they would constitute no indebtedness against the county, and claiming that the county judge, who was the fiscal agent of the county, should be enjoined from issuing the bonds; that an injunction was granted, and that the bonds were issued, *lite pendente*, and put on the market, with full notice of the pendency of the suit; that this suit was continuously and successfully prosecuted, and the courts of the State had adjudged the bonds to be null and void, and the collection of the same perpetually enjoined.

I. As to the power or authority of the county to subscribe for railroad stock, and to issue bonds therefor.

Much the largest portion of the brief of the counsel is devoted to a very able discussion of this question. But, after the decision of this court in the case of *Gelpcke* v. *The City of Dubuque*,* and the series of cases following it, we must decline a re-examination of the question. We regret the difference of opinion on the subject of these bonds, between this court and the courts of the State of Iowa; but it involves a principle and rule of property, in our opinion, so just, and so essential to the protection of the rights of the *bonâ fide* holder of this class of securities, that, however much we may respect the judgment of those differing from us, we cannot give up our own. That difference, as we understand it, consists in this: This court held, in *Gelpcke* v. *The City of Dubuque*, that bonds, issued by counties, cities, or towns, in Iowa, to railroad companies, for stock in said companies, and which said bodies, at the time the bonds were issued, were held, by the settled adjudications of the

* 1 Wallace, 176–223.

highest courts of the State, to possess full power, under its constitution and laws, to issue the same, are ever after valid and binding upon the body issuing them, in the hands of a *bonâ fide* holder. Since these bonds were issued, and in the hands of *bonâ fide* holders for value, the courts of Iowa have reversed their previous decisions, and now hold that these bodies possess no such power under the constitution and laws of the State, and hence they are void, even in the hands of the *bonâ fide* holder. The learned and elaborate argument of the counsel for the plaintiff in error, in this case, is devoted to the support of these more recent decisions, and the earnestness and care with which he has discussed the question, Which series of cases shall prevail? leave no doubt of the sincerity of his conviction. But, for the reasons stated, we must respectfully decline following him.

II. The second ground of defence involves the question of notice to the plaintiff below, or, in other words, the effect of the *lis pendens*, as claimed by the counsel. In order to examine this branch of the defence, understandingly, it will be necessary to recur, for a few moments, to the facts as they appear in the answer.

The first suit, by *McMillen and others* v. *Boyles County Judge*, was commenced by petition or bill, October, 1856, and terminated in a decree to enjoin the defendant, December Term thereafter.

The opinion of the Supreme Court, in this case, is in the record.* The court held, the election, by the voters in the county, under the direction of the county judge, to have been irregular in several particulars, as not being in conformity to the act providing for a submission of the question of subscribing for the stock and issuing the bonds. At this time it does not appear that any stock had been subscribed for or bonds issued. The question was presented, in this case, and pressed by counsel for the petitioner, whether or not the county possessed competent power to issue the bonds under the constitution and laws of the State?

* Reported in 3 Iowa, 311.

Opinion of the court.

Judge Stockton, who delivered the opinion, as it respects this question, observed, "We do not deem it expedient or necessary, at the present time, to enter into an examination of the other questions presented and discussed by counsel. Their inherent importance, and the great interest felt in their decision by a large portion of the people of the State, admonish us of the patient study and deliberation with which their investigation must be attended. Another reason, he observes, which has had its weight with us, is, it is understood that the questions raised have been pressed upon, and decided by, the former members of this court, in the case of the *County of Dubuque* v. *The Dubuque and Pacific Railroad Company*."

Soon after this decision, the legislature being in session, an act was passed to cure the defects in the proceedings before the county judge, in the submission of the question to the voters, which became a law on the 29th January, 1857. This act is very comprehensive. After confirming the proceedings in the first section, it declares that "the subscriptions made by said county, &c., and the bonds of said counties, &c., issued in pursuance of said votes and subscription, or hereafter to be issued, are hereby declared to be legal and valid; and that all such bonds issued, and hereafter to be issued, in pursuance of such votes and subscriptions, shall be a valid lien upon the taxable property of said county, &c."

The second section is equally emphatic. It provides, that "the county judge, &c., or other proper authorities of said county, &c., shall levy and collect a tax to meet the payment of the principal and interest of such bonds; and the counties, &c., shall not be allowed to plead in any suit brought to recover the principal or interest of such bonds, that the same are usurious, irregular, or invalid, in consequence of the informalities cured by this act."

The third section re-affirms the validity of all bonds heretofore issued by the county, and the subscriptions to the railroads, notwithstanding any informalities or irregularities in the submission of the question to the vote of the people.

A second suit was brought by petition or bill, by McMillen and others, against the judge of the county, on the 26th February, 1858, to enjoin him from levying a tax, and to have the confirmatory law declared to be unconstitutional, and the bonds void. This suit was commenced more than a year after the passage of the act; and such proceedings were had therein, that the District Court of the County of Lee dismissed it; and, on appeal, this decree was affirmed on the 22d June, 1858. The opinion of the court is in the record.* It was delivered by Chief Justice Wright. He observes, "The power of a county to take stock in a company organized for the purpose of constructing a railroad, or other public improvement, through the same, has been recognized by a majority of this court in the following cases." He then refers to *Dubuque* v. *Dubuque and Pacific Railroad Company*,† *Leech* v. *Bissel, County Judge of Cedar County*, and *Clapp* v. *Cedar County*,‡ and *Ring* v. *Johnson*, decided at the present term.§ He adds, "While I have never concurred in this ruling, and still deny the power, yet it may now, as I suppose, be regarded as settled." He then examines the question whether the legislature had power to pass the act of 29th January, 1857; and whether it had the effect of legalizing the vote taken in Lee County, and comes to the conclusion that the legislature was perfectly competent to legalize and make valid the proceedings before the county judge.

This decision of the highest court of the State upon the power of the county to issue the bonds, of which those in question are a part, and also upon the power of the legislature to confirm the irregularities committed in the preliminary steps to their issue, would seem to have put an end to any controversy concerning them. They have the sanction of both the legislative and judicial departments of the State. Higher authority could not be invoked in their favor. If the holders or purchasers cannot confide in these sanctions in

* Reported in 6 Iowa, 391.
† 4 Green, 1.
‡ 5 Iowa, 15.
§ 6 Id. 265.

parting with their money, they may well despair of any safety or security in their dealings in them.

Now, what is the answer to all this authority?

On the 28th July, 1860, two years after this judgment affirming the validity of the bonds, a petition or bill of review was filed in a district court for the purpose of obtaining a re-examination of the judgment; and such proceedings were had, that on the 18th October, 1862, the Supreme Court adjudged that the bonds and coupons, together with the vote of the county of Lee, by which it is claimed they were authorized, and the subscription to the stock of the railroad companies, and all other acts and things done in and about the premises by the county judge and his predecessors in office, and the levy of taxes, &c., are all unauthorized by law and utterly void; and that the act of the legislature curing or attempting to cure the irregularities in the vote of the county are also held to be null and void. This case is reported in 14 Iowa, p. 107. It is due to the learned counsel for the plaintiff in error to say, that he does not put this branch of the defence on the ground that the last decision in the case should prevail over the prior one holding the bonds to be valid, after the legislative sanction; but puts it on this ground in his own words, namely: "That the court erred in sustaining the demurrer to the answer and amended answer of defendant, in so far as they set up the pendency of a suit to cancel said bonds at the time of their issue, and at the time of plaintiff's purchase, and which suit being continuously prosecuted resulted in a decree declaring invalid the bonds."

Now, there are two answers to this ground of defence: First, the suit brought to enjoin the issuing of the bonds for irregularities in the vote of the county, and the judgment enjoining the judge was disposed of by the confirmatory act of the legislature. By that act the irregularities were cured, and the bonds already issued or thereafter to be issued were declared valid. After this act notice was an element of no importance. The suit was at an end. The whole foundation on which it rested was removed. This was so regarded

by the plaintiffs, for two years afterwards they brought a second suit to have the bonds declared void for want of power in the county to issue them; and also the act of the legislature for the want of power to confirm the irregularities in the vote. The decision in that case, however, as we have seen, was adverse to both these propositions.

In the second place, there was no pending litigation from the commencement of the first suit to the termination of the last, namely, from the 15th of October, 1856, to the 18th of October, 1862.

There were three distinct and independent suits, with an interval of one year between the first and second, and of two years between the second and third. The doctrine of *lis pendens*, therefore, has no application to the case.

JUDGMENT AFFIRMED.

Mr. Justice MILLER did not sit in this case.

GORDON *v.* UNITED STATES.

1. An act of Congress referring a claim against the government to an officer of one of the executive departments, to examine and adjust, does not, even though the claimant and government act under the statute, and the account is examined and adjusted, make the case one of arbitrament and award in the technical sense of these words, and so as to bind either party as by submission to award.

   Hence a subsequent act repealing the one making the reference (the claim not being yet paid), impairs no right and is valid. *De Groot* v. *United States* (5 Wallace, 432) affirmed.
2. *Semble* that the court does not sanction the allowance of interest on claims against the government.

APPEAL from the Court of Claims; the case having been thus:

The legal representatives of George Fisher, deceased, by petition represented to the court just named, that during the lifetime of the said George, and in the year 1813, a large amount of his property in Florida was taken or destroyed by the troops of the United States. That before his