

a long line of decisions. I am not prepared to do so. If the courts of Illinois had been willing to take judicial notice of the legislative journals in determining what the law of the State is, there might be some propriety in requiring the people to do so. But when the courts make the question of overcoming a *prima facie* law one of fact, I think the people may do the same thing, and bring to their protection the same principles of estoppel which govern them in other cases. For these reasons I dissent from the opinion which has just been read.

NOTE. — At a subsequent day of the term, counsel for the plaintiffs in error moved the court for further instructions in these cases to the court below. MR. JUSTICE BRADLEY, on behalf of the court, said: "We do not think any further directions necessary in these cases. We hold that the estoppel set up by the plaintiff below should not be allowed, but that the defendant should be permitted to show the invalidity of the act relied on by the plaintiff. We recognize the construction of the Constitution of Illinois adopted by the State court, to the effect that a law is void if not passed by the requisite majority, and so entered on the journal. We also hold the existence of a law to be a judicial question, to be decided by the court, though framed in form as an issue of fact. It follows that the court below, on retrying the case, must itself be satisfied whether the law in question was or was not constitutionally passed, and the vote entered on the journals, and instruct the jury accordingly. The evidence, or means of ascertaining this fact, must be such as is legally applicable to such a case according to the laws of Illinois. But, strictly speaking, the issue is more properly referable to the court than to a jury. That it may be so framed the judgment will be amended, directing the court below to award in each case a *venire de novo*, or to allow the parties to amend their pleadings, as they shall be advised, in order to refer the trial of the issue to the court instead of the jury."

MULLER v. DOWS.

Stipulations between counsel, relative to the course of proceeding in a cause pending in this court, cannot be withdrawn by either party without the consent of the other, except by leave of the court upon cause shown.

APPEAL from the Circuit Court of the United States for the District of Iowa.

On motion of *Mr. Thomas F. Withrow*, for the appellees, to take up and consider the appeal as submitted under the twentieth rule.

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

Stipulations between counsel relative to the course of proceeding in a cause pending in this court cannot be withdrawn by one party without the consent of the other, except by leave of the court upon cause shown. The counsel in this case stipulated in writing, on or before July 5, 1876, to submit the cause on printed arguments, under rule 20, during the first ninety days of this term. This stipulation was filed here July 5; but, Oct. 21, the counsel for the appellants notified the counsel for the appellees that he withdrew his agreement.

The counsel for the appellees having filed a printed argument within the ninety days, now asks that the cause be taken up and considered by the court as submitted under the rule.

This we might with propriety do, as, if the desired withdrawal is not assented to, application for the vacation of the stipulation ought to be made here in time to have it disposed of before the expiration of the ninety days. But as we have never before been called upon to settle the practice applicable to this class of cases, it is now ordered that the appellants cause a printed argument to be filed in their behalf on or before March 6, next, or show good cause why the stipulation for submission made by their counsel should not be enforced against them; and, in default, that the cause be taken up and considered as submitted under the rule, without argument by the appellants.

COMMISSIONERS OF MARION COUNTY v. CLARK.

1. A court is not required to submit evidence to the jury, unless it be of such a character as would warrant a verdict for the party producing it, and upon whom the burden of proof is imposed.
2. Where the title of the original holder of negotiable instruments, which are infected with fraud, invalidity, or illegality, is destroyed, that of every subsequent holder which rests on that foundation, and no other, falls with it.
3. Where the first indorsee, without notice of any prior equities between the original parties, purchases, for value, a negotiable instrument, the second indorsee, who acquires it before it is due, and for value, takes a good title, although he had notice of such equities.
4. Bonds issued, pursuant to legislative authority, by a municipal corporation in aid of a railroad company are negotiable instruments.
5. *Town of Coloma v. Eaves* (92 U. S. 486) cited and approved.