

Woods Vs. Lawrence County

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Appellant : Woods

Respondent : Lawrence County

Judgement :

Woods v. Lawrence County - 66 U.S. 386 (1861)

U.S. Supreme Court Woods v. Lawrence County, 66 U.S. 1 Black 386 386 (1861)

Woods v. Lawrence County

66 U.S. (1 Black) 386

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SYLLABUS

1. Where the charter of a railroad company authorizes the counties "through which it may pass" to subscribe to its stock, a county lying between the two termini of the road may subscribe without waiting until the route is actually located.

2. If the statute requires the grand jury to fix the amount of the subscription and to approve of it, and upon their report's being filed empowers the commissioners to carry the same into effect by making the subscription in the name of the county, and if these things be done agreeably to the law, the county cannot afterwards deny its obligation to pay the amount subscribed.

3. Where the charter provided that payment of the stock should be made upon such terms and in such manner as might be agreed on between the company and the county, an agreement to pay in bonds, with coupons attached for the semiannual interest, is binding, and the bonds being issued accordingly, are lawful and valid securities.

4. In a suit brought to recover the arrears of interest on such bonds, it is not necessary for the holder to show that the grand jury fixed the manner and terms of paying for the stock; nor is it a defense for the county to show that the grand jury omitted to do so. It is enough that the manner and terms of payment were agreed upon between the company and the commissioners.

5. In a suit brought upon the coupons by a *bona fide* holder, his right to recover is not affected by the fact that the railroad company sold the bonds at a discount of twenty-five percent, contrary to the charter, which forbids the sale of them at less than their par value.

This was an action of debt brought in the Circuit Court of the United States for the Western District of Pennsylvania by Alexander G. Woods, a citizen of New York, against the County of Lawrence in the State of Pennsylvania to recover the amount of certain coupons for interest on bonds given by

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the defendant to the Northwestern Railroad Company. The defendant denied its obligation to pay the coupons or the bonds.

The plaintiff, to maintain the issue on his part, gave in evidence the act of the Pennsylvania Legislature by which the Northwestern Railroad Company was

incorporated. Section 1 appointed certain persons therein named to open books, receive subscriptions, and organize a company with all the powers and subject to all the duties, restrictions, and regulations prescribed by the general railroad law of the state. Section 2 fixes the capital stock at 20,000 shares of \$50 each, to be increased to \$2,000,000 hereafter if found expedient. Section 3 fixes the termini and prescribes the gauge &c., of the road to be built. Section 4 authorizes the company to use any section of five miles when finished, as fully as the whole might be used if it were all finished. The remaining three sections of the act are as follows:

"SECTION 5. That said company be, and they are hereby, authorized to borrow money to an amount not exceeding the capital stock of said company upon bonds to be issued by said company whenever the said president and directors shall deem the issue of such bonds expedient, *provided* that the rate of interest on said bonds shall not exceed seven percentum per annum, and that said bonds shall be convertible into the stock of said company, at the option of said company and the holder or holders of said bonds, and that no bond shall be issued for a sum less than one hundred dollars."

"SECTION 6. That the president and directors of said company are hereby authorized to pay to the stockholders, in the months of January and July in each year, interest at the rate of six percentum per annum on all installments paid by them, and to continue to pay the same until the road shall be completed, and all the profits or earnings of the said railroad within the said time shall be credited to the cost of construction; and all interest paid shall be charged to the cost of construction, but no interest shall be paid on any share of stock upon which any installment that has been called for remains

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unpaid, and the stock of said company shall not be subject to any tax in consequence of the payment of the interest hereby authorized, nor until the net earnings of the company shall amount to at least six percentum per annum upon the capital invested."

"SECTION 7. That the counties through parts of which said railroads may pass shall be and they are hereby severally authorized to subscribe to the capital stock of said railroad company and to make payments on such terms and in such manner as may be agreed upon by said company and the proper county, *provided* that the amount of subscription by any county shall not exceed ten percentum of the assessed valuation thereof, and that before any such subscription is made, the amount thereof shall be fixed and determined by one grand jury of the proper county and approved by the same. Upon the report of such grand jury being filed, the county commissioners may carry the same into effect by making, in the name of the county, the subscription so directed by the said grand jury, *provided* that whenever bonds of the respective counties are given in payment of subscriptions, the same shall not be sold by said railroad company at less than par value, and no bonds shall be in less amount than one hundred dollars; and such bonds shall not be subject to taxation until the clear profits of said railroad shall amount to six percent upon the cost thereof; and that all subscriptions made or to be made in the name of any county shall be held and deemed valid if made by a majority of the commissioners of the respective counties."

It was proved that the grand jury of Lawrence County, on the 21st of May, 1853, passed a resolution recommending that the county commissioners

"subscribe stock to the Northwestern Railroad to the amount of \$200,000, agreeably to the act of assembly incorporating said company, and to issue bonds for the payment of said stock, making the conditions such as will best promote the interest of said railroad company and the County of Lawrence."

On the 20th of August, 1853, the county commissioners

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subscribed \$200,000 for the county to the capital stock of the railroad company, by affixing their names and their official seal to the following instrument:

"By authority of an Act of the General Assembly of the Commonwealth of Pennsylvania passed the 9th day of February, A.D. 1853, entitled 'An act to incorporate the Northwestern Railroad Company,' and by virtue of the action of the grand jury of the County of Lawrence had at May session, A.D. 1853, at the court of said county, fixing and determining the amount of subscription to be made to the said Northwestern Railroad Company by said County of Lawrence, we, the undersigned, commissioners of said county, do hereby subscribe for and in the name of the County of Lawrence to the capital stock of the Northwestern Railroad Company the sum of two hundred thousand dollars, being four thousand shares in said capital stock. It is understood that whenever the amount of this subscription is required from the County of Lawrence by the said company, it is to be paid in the bonds of this county, to be given in sums of not less than one thousand dollars each, payable in twenty years after date or such other time after date as may be agreed upon between the Commissioners of Lawrence County and said railroad company. The interest on said bonds to be paid semiannually, and said interest to be paid by said railroad company until such time as the Northwestern Railroad is completed."

"In testimony whereof we have hereunto set our hands and affixed the seal of the said County of Lawrence this 20th day of August, A.D. one thousand eight hundred and fifty-three."

To pay this subscription, bonds were signed, sealed, and delivered to the railroad company in the following from:

"Know all men by these presents that the County of Lawrence, in the Commonwealth of Pennsylvania, is indebted to the Northwestern Railroad Company, in the full and just sum of one thousand dollars, which sum of money said county agrees and promises to pay, twenty years after date hereof, to the said Northwestern Railroad Company or bearer, with interest at the rate of six percent per annum, payable semiannually, on the first day of January and July, at the office

of the Pennsylvania Railroad Company in the City of Philadelphia upon the delivery of the coupons severally hereto annexed, for which payments of principal and interest, well and truly to be made, the faith, credit, and property of said County of Lawrence are hereby solemnly pledged, under the authority of an Act of Assembly of this Commonwealth entitled 'An act to incorporate the Northwestern Railroad Company,' which said act was approved the ninth day of February, A.D. eighteen hundred and fifty-three."

"In testimony whereof, and pursuant to said act of the Legislature of Pennsylvania, and resolution of the county commissioners, in their official capacity, passed the _____, the commissioners of said county have signed, and the clerk of said commissioners has countersigned these presents, and have hereto caused the seal of said county to be affixed this ____ day of _____ A.D. one thousand eight hundred and fifty-____."

To each of these bonds forty coupons were attached, of which the following is a specimen:

"COUNTY OF LAWRENCE"

"Warrant, No. 37 For thirty dollars"

"Being for six months' interest on bond No. ____, payable on the first day of January, A.D. 1873, at the office of the Pennsylvania Railroad Company in the City of Philadelphia."

"\$30 _____, Clerk"

On the part of the defendant, it was not only proved but it was conceded by the plaintiff to be true that the presentment or recommendation of the grand jury was made before the railroad company was organized; that the subscription by the commissioners was made before the railroad was located, and that in fact the railroad or any part of it never was located within the limits of Lawrence County. It was also proved that the bonds of the county, after they came into the hands of the railroad company, were disposed of not at their par value, as the act of

incorporation requires, but for seventy-five percent of that value.

The defendants on these facts asked the circuit court to charge that:

1. The county was not authorized by the act of

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assembly to make this subscription.

2. The subscription is void because the grand jury did not prescribe the manner and terms of payment.

3. The county was not authorized to issue the bonds.

4. The sale of the bonds, contrary to law, at a less price than par, avoided them in the hands of the purchaser.

Upon the points of law the judges of the circuit court differed in opinion, and made a certificate of their division, which brought the cause into this Court.

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MR. JUSTICE WAYNE.

This is an action of debt brought upon coupons for interest attached to bonds, which had been passed by the County of Lawrence to the Northwestern Railroad Company in payment of its subscription for two hundred thousand dollars to the capital stock of that company.

It is here upon a certificate of a division of opinion between the judge of the circuit court.

The company was incorporated as the Northwestern Railroad Company on the 9th February, 1853, with the power to build a railroad from some point upon the Pennsylvania or the Alleghany Portage Railroad at or west of Johnstown, by the way of Butler, to the Pennsylvania and Ohio state line, at some point on the

western boundary line of Lawrence County. It was to be done on the most eligible route, &c.;, and to be connected with any railroad then constructed or which might thereafter be built at either end or at any intermediate point on the line thereof. The capital stock was to be twenty thousand shares of fifty dollars each, with power to increase it to two millions of dollars if the directors of the company should think its exigencies required that to be done. The company was authorized in either event in respect to the amount of

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capital, to build the road *by borrowing money on its bonds, bearing interest at seven per centum*, not exceeding the amount of its capital, and with the further limitation that no bond should be issued for less than one hundred dollars. The seventh and last section of the act is that the counties, through parts of which the railroad may pass, are severally authorized to subscribe to the capital stock of the company and to pay its subscription in such manner as might be agreed upon between the county and the company. But no county could subscribe more than ten percent upon its assessed valuation, and before any subscription could be made, its amount was to be determined by a grand jury of the county and approved by it. And when that had been done and filed, the county commissioners were authorized to make the subscription as the grand jury had directed. Then follows a proviso that when the bonds of the county were passed to the railroad company, they should not be sold by it at less than their par value. The meaning of that proviso will be given hereafter, when we shall consider the fourth question upon which the judges were divided in opinion.

Upon the trial of the case, the plaintiff gave in evidence the recommendation and direction of the grand jury for the subscription. It was executed by the commissioners to the amount of two hundred thousand dollars, for the payment of which the county was to issue bonds, with such conditions as might best promote the interests of the railroad company and of the County of Lawrence. The plaintiff also gave in evidence one of the coupons upon which he had sued, attached to the county bonds. We give a copy of it, that the obligation of the county to pay those coupons and their bonds, when the latter shall become payable, may be

better understood:

"COUNTY OF LAWRENCE"

"Warrant No. 37 for 30 dollars. Being for six months' interest on bond No.____, payable on the first day of January, A.D. 1873, at the office of the Pennsylvania Railroad Company, in Philadelphia."

"\$30 _____, Clerk "

Here the plaintiff rested his case.

The defendant gave in evidence the agreement for the subscription,

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as made by the commissioners. We have examined it in connection with the presentment of the grand jury and found both properly in conformity with the section of the act giving to the counties, severally, the right to subscribe. It is recommended and determined that the subscription of the County of Lawrence shall be two hundred thousand dollars, or four thousand shares of the capital stock of the railroad company, it being understood, that whenever the amount of it should be required by the company from the county, it should be paid in bonds of sums not less than a thousand dollars, payable in twenty years after date, or at such other times after the date of the bonds as might be agreed upon between the commissioners of the county and the railroad company, the interest upon the bonds to be paid semiannually by the *railroad company* until the time when the road shall have been completed.

The defendant then gave other evidence to prove that when the grand jury made its presentment, the railroad company had not been organized; also that when the subscription was made, the company had not fixed upon its line or that any part of it should be run within the limits of Lawrence County, and then that no part of it had ever been built within that county.

It was also proved by the defendant that the company, in using the bonds of the county to get money upon them for the construction of the road, had sold them at a discount of twenty-five percent, but not with having credited the county with less than their par amount.

Thus the case stood when it was submitted to the jury, and the defendant asked the court to give the following instructions:

"1. That there was no authority vested in the County of Lawrence to make the subscription to the Northwestern Railroad Company, and that the subscription and the bonds which had been issued for its payment were void."

"2. That the recommendation and report of the grand jury were materially deficient, in not setting forth or prescribing the terms and manner of payment, and that the subscription was void on that account. "

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"3. That the County of Lawrence was not authorized to issue the instruments or bonds question."

"4. That the county bonds, which had been given in payment of the subscription, having been sold below their par value, was contrary to the provision of the act incorporating the railroad company, and were therefore avoided in the hands of purchasers."

We observe in respect to the first, second, and third questions that they are not now open questions in this Court. They were in effect comprehended in the case of *Curtis v. County of Butler*, which this Court passed upon at the last term, as well in respect to the constitutionality of the Act of the 9th of February, 1853, as to what was the proper construction of it. This Court then decided, after mature deliberation upon all the sections of the act, assisted by the arguments of Mr. Stanton and Mr. Black which were in every particular fully up to the occasion, that by the 7th section of the Act of the 9th February, 1853, the counties through parts of which the Northwestern Railroad may pass were authorized to subscribe to the

capital stock of the company and to make payments on such terms as might be agreed upon between the company and the county, and that the subscription was valid and binding upon it when made by a majority of its commissioners. It was also then decided that the power given to the county to subscribe included its right to issue bonds, with coupons for interest attached, for the payment of its subscription. The constitutionality of the act was admitted in the argument then, as it has been in this case. But it is now urged, in addition to what was then said, that as the County of Lawrence had not been empowered *by name* to subscribe, such omissions must suggest a purpose of the legislature, when passing the act, to accommodate itself to what is asserted to have been, at that time, the constitutional law of Pennsylvania, as it had been expounded by the supreme court of that state in respect to the right of the legislature to empower a county to subscribe and tax the people of it to pay for railroads and other improvements of a like kind, which were not positively to be constructed within its territory.

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One of the cases cited is that of the *Commonwealth ex Relatione Dysart v. McWilliams and Isett*. It was a *quo warranto* in which it was alleged that they had usurped the office of supervisors and assessors of Franklin Township, under and by virtue of the Act of the 13th April, 1846, and of assessing, levying, and collecting taxes, for the use and benefit of the Spruce Creek & Water Street Turnpike company. And it was decided that the defendants, as supervisors, had the power to levy and collect a tax to enable them to subscribe for shares of the stock of the turnpike company at the cost of the inhabitants of the township in virtue of the authority vested in the supervisors of townships by the Act of the 15th of April, 1834, and because the 16th section of the act of \$1,846, incorporating the turnpike company, had provided that the supervisors of the public highways, in the townships through which the road may pass,

"were authorized to subscribe in the name and behalf and for the use of its inhabitants any number of shares, not exceeding three thousand six hundred, in the capital stock of the turnpike road."

The decision is not put upon the locality of the route of the road, though in fact it was located and passed through the Township of Franklin, but upon the constitutional power of the legislature to pass both acts just mentioned, and that in doing so it did not differ in principle from the power given to tax for the purpose of repairing roads and bridges, and for such other purposes as may be authorized by law.

Before leaving this case, we recommend it as a whole, and particularly the decision of Mr. Justice Bell, to the perusal of such of the profession who may be engaged in a case of *quo warranto* in the State of Pennsylvania.

The other case cited of *McDermond v. Kennedy*, Brightley's Reports 332, which was taken to the supreme court and affirmed, is that a municipal corporation, under a power to make such bylaws as shall be necessary to "promote the peace, good order, benefit, and advantage of the borough," and to assess such taxes as may be necessary for carrying the same into effect, *is not authorized to levy a tax* for the payment of a part of the expense to be incurred by a railroad company in

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bringing the line of their road nearer to the town than it had been originally located. Judge Reed places his conclusion exclusively upon the disability of a borough corporation to exercise rights on private property except for corporate purposes, and he says it can no more raise a tax and grant the avails of it to a railroad because it is believed to be advantageous to the borough than they could do anything else, for there is no relation or connection between the railroad and the borough. Neither of the cases cited has any application to sustain the position taken -- that the legislature meant, by omitting the names of the counties in the act of the 9th February, 1853, that it had not the power to authorize them to subscribe to the capital stock of a railroad which was not to be run within its territory.

Nor do these cases countenance the idea that the power given to the county to subscribe was not exercisable *in praesenti*, but was in abeyance until the passing of the railroad through it. It is true, when a charter is given for franchises or

property to a corporation which is to be brought into existence by some future acts of the corporators, that such franchises or property are in abeyance until such acts shall have been done, and then they instantaneously attach. But not to distinguish the acts enjoined or permitted, to give to the corporation its intended purpose and object, is to confound the franchises with such acts, and would nullify the means by which the franchises are to be produced.

A franchise is a privilege conferred in the United States by the immediate or antecedent legislation of an act of incorporation, with conditions expressed or necessarily inferential from its language as to the manner of its exercise and for its enjoyment. To ascertain how it is to be brought into existence, the whole charter must be consulted and compared. If that depends upon cooperating subscriptions of money, to be borrowed upon securities of indebtedness bearing interest, payable yearly or at times within the year until the security is finally payable, it must be intended that all the parties to whom has been given a right to subscribe may use it to aid the beginning and the completion of the object; in other

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words, when there is no express limitation as to the time of making the subscription, that it was optional with those who could do so to make it, when most convenient or advantageous to themselves. In this instance, we find that certain persons were named in the first section of the act as commissioners to receive subscriptions and to organize the company, and that the counties, through parts of which the railroad may pass, were permitted to make their subscriptions with those commissioners, and that they could receive them. Then, it was intended that the subscription should precede the organization, and no one who reads the whole act will doubt that the latter depended upon the subscription of the larger, if not the whole number of the twenty thousand shares of which the capital stock was to consist.

The road was to be built with money to be borrowed on the bonds of the company, and upon the bonds of such of the counties meant in the act which might choose to subscribe. Until the subscription received had indicated the responsibility of the

parties to be equivalent to the contemplated cost of the road, or that it would become so, there was neither an inducement to organize the company nor security for capitalists to lend upon.

We conclude that there is no weight in the suggestion of its having been meant by the legislature that the road was to be carried within a county before it could subscribe. The subscription depended upon the presentment of the grand jury, and the agreement of the commissioners to take for the county four thousand shares of the company's capital stock. And it was agreed that the subscription was to be paid for in bonds of the county of not less than a thousand dollars, payable in twenty years after date or at such other time as the company and the county might agree upon. The company having agreed to pay the interest until such time as the Northwestern Railroad should be completed, the county bonds were made and paid to the company accordingly, and we have no doubt of the obligation of the county to pay them.

But it is now said that such of the county bonds as were sold by the president and directors of the railroad at a discount

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are "avoidable" in the hands of the purchasers of them because the act for making and paying them to the company declares that the company shall not sell them "at less than their par value." Such are the words of the statute, and it was proved and conceded by the plaintiff that they were sold at a discount of twenty-five percent

The words of the seventh section are that whenever bonds of the respective counties are given in payment of subscriptions, the same shall not be sold by said railroad company at less than par value.

Those words have a meaning, but not such as it was assumed to be when the court was asked to instruct the jury upon the fourth prayer. A comparison of the seventh section, in which they are, with the fifth and sixth sections of the act will show that they were meant to secure to the counties the par value of their installments, as those were to be paid in bonds, from any reduction by the sale of

them at a discount, to the loss of the county, after the railroad company had received them in payment. The words are whenever bonds of the respective counties are given in payment, the same shall not be sold by the railroad company at less than par value &c.;, and such bonds shall not be subject to taxation until the clear profits of the railroad shall amount to six percent upon the cost of it. Such was the understanding of the commissioners and the railroad company when they entered into their agreement for the subscription. The agreement itself, the stipulation that the subscription was to be paid by bonds, the undertaking of the company that it would relieve the county from the payment of interest of its bonds, and that the interest should be on their par value until the entire railroad was completed -- and every section of the act shows it to have been the intention of the legislature to have the railroad constructed by money to be borrowed upon bonds, payable at a distant date -- indicate the correctness of our interpretation of the limitation upon the sale of the county bonds at less than par. And the conclusion is strengthened by consulting the sixth section of the act, giving to the company the right to pay an interest of six

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percent per annum to the stockholders, on installments for subscription paid by them, until the railroad should be finished, and requiring, when that happened, that all interest which had been paid in the meantime should be credited to the cost of the construction of the road -- in that, placing all of the stockholders upon an equality as to the cost of the road, and securing to them the number of shares for which they had subscribed, and for which they had paid by installments. Without such an arrangement, that equality could not have been produced, and this result in respect to the subscription of the counties paid by bonds would have followed. If the railroad could have sold the bonds at less than par after they had been received in payment, and charged the discount to the counties, in that case the latter could not have received the number of shares for which they had subscribed, by permitting a part of the sum, for which they were authorized to tax the counties, for the ultimate payment of the bonds, to be diverted to a purpose neither contemplated nor allowed by the act, and, in respect to the County of Lawrence,

its subscription would have been reduced to fifty thousand dollars less than the amount of the bonds which it had issued and paid to the railroad, supposing the whole to have been sold at 25 percent less than their par value, in that way reducing its dividend -- three thousand dollars per annum -- when the clear income of the company, after it had been finished, should become 6 percent per annum upon the cost of the road.

We are confirmed in the opinion that the limitation upon the company that it should not sell the bonds of the counties at less than par after it had taken them in payment of the subscription had no other meaning than this, that they should not so sell them at the expense of the counties -- causing any loss to them less than their par value, as they were payable to the company at par in twenty years, with an annual interest of six percent

It has also been insisted that the County of Lawrence could not subscribe before the Northwestern Railroad Company had been organized or before its line had been indicated by a survey

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on the ground and a part of it had been fixed for construction within the county; and it is said that no part of it had been built in it.

Having already shown that the right to subscribe was given to enable the company to organize, and that organization was essential before the route of the road could be determined, and that there was no direction in the act when that was to be done, and that a wide discretion had been given as to the point of its beginning, and how it should be continued in the counties, and where it should terminate on the Pennsylvania and Ohio state line, we must declare that the objection has neither pertinency nor force against the subscription made by the County of Lawrence. Another objection is that the right to subscribe depended upon a part of the road having been built within the county.

We deem it only necessary to repeat what has just been said, that the act indicates no point at which the line of the road should be begun. That, taken in

connection with the fourth section of the act, it could not have been the intention to require a part of the railroad to be built in each county before it should subscribe, its language being that its franchises should be used and enjoyed when five miles of the railroad had been finished, as fully as if the whole road had been completed.

We therefore answer that there was authority in the County of Lawrence constitutionally, and by the proper construction of the Act of the 9th February, 1853, to subscribe to the stock of the Northwestern Railroad Company as the subscription was made, and that the bonds issued by the county and given in payment of its subscription to the railroad company are valid and binding upon the county to pay and redeem them according to their tenor.

We answer to the second prayer, that there was no deficiency in the action of the grand jury in making its presentment, or in setting forth the terms in which the subscription should be made.

We answer to the third prayer that the County of Lawrence was authorized to issue such bonds as they did issue, and pass

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to the railroad company in payment of its subscription to the Northwestern Railroad Company.

To the fourth prayer we answer, that the sale of the county bonds by the railroad company at less than par does not avoid them in the hands of the purchaser.