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**Van Hostrup Vs. Madison City**

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**Court** : US Supreme Court

**Decided On :** 1863

**Appeal No.** : 68 U.S. 291

**Appellant** : Van Hostrup

**Respondent** : Madison City

**Judgement** :

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**Van Hostrup v. Madison City**

**68 U.S. (1 Wall.) 291**

*ERROR TO THE CIRCUIT COURT*

*FOR THE DISTRICT OF INDIANA*

## SYLLABUS

I. An authority to a city to take stock in any chartered company for making "a road or *roads* to said city" authorizes taking stock in a road between other cities or towns, from the nearest of which to the city subscribing there is a direct road, the

road in which the stock is taken being in fact a road in extension and prolongation of one leading into the city.

2. Where authority is given to a city to take stock in a road provided the act be "on the petition of two-thirds of the citizens," this proviso will be presumed to have been complied with where the bonds show on their face that they were issued in virtue of an ordinance of council of the city making the subscription, the bonds being in the hands of *bona fide* holders for value. In the case before the Court, the minutes of council recorded that the citizens "with great unanimity" had petitioned.

The suit was brought in the court below against the City of *Madison,* in Indiana, for moneys due upon coupons attached to certain bonds issued by the city authorities, signed by the mayor and the city clerk, and to which was affixed the seal of the corporation, by which the city acknowledged, that in virtue of an ordinance of the common council, passed 2d September, 1852, it owed and promised to pay the president of the *Columbus & Shelby* Railroad Company, *or bearer,* $1,000, redeemable on the 1st of November, in the year 1872, with interest at the rate of six percent per annum, semiannually, on the first days of May and November of each year, from the date of the bonds, at the banking house of Winslow, Lanier & Co. in the City of New York.

These bonds were negotiated and put into circulation by the Columbus & Shelby Railroad Company, and purchased in the market by the plaintiffs, *bona fide,* and for a valuable consideration. They had been issued to the railroad company for stock subscribed in *that* company by the City of Madison aforesaid.

As respected the authority of the city to subscribe, it appeared that one section of its charter * authorized it

"to take

stock in any chartered company for making a road or roads *to* said city, *provided* that *no* stock shall be subscribed &c.;, unless it be *on the petition of two-thirds of the citizens* who are freeholders &c.;, and *provided* that in all cases where stock is taken, the common council shall have power to borrow money,"

&c.;

At the time when the subscription to the Columbus & Shelby road was made and the bonds issued, a railroad called the Madison & *Indianapolis* Railroad, a road leading from

image:a

*Indianapolis,* in the interior of the state, to Madison was in operation, and brought down from one part of the interior, where Indianapolis is, to Madison, on the Ohio River, the products of the state. This road passed *through* Columbus. The Columbus & *Shelby* Company (the company to which the subscription was made) was organized to construct a road from Columbus to Shelby County, terminating at Shelbyville. *But Columbus was forty-six miles from Madison,* Shelbyville being about twenty-three north of it. Through Columbus, and by means of the connection with the Madison & *Indianapolis* road, the Columbus & Shelby road did lead to Madison and nowhere else; though if regarded as an independent and isolated road, and as one between Shelby and Columbus only, it could not be said to be a road *to* the city designated. The diagram will elucidate the matter.

As respected the required "petition of two-thirds of the citizens," the matter rested apparently upon an entry on the minutes of the city council, which stated that "the freeholders of the City of Madison, *with great unanimity,* had petitioned," &c.;

The defenses set up by the city were

"that the bonds were issued to the Columbus & Shelby Railroad Company, to pay for a subscription by the city to the capital stock of the *said* railroad company, and for no other consideration;

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that the said Columbus & Shelby Railroad Company was not a chartered company for the purpose of making a road *to* the City of Madison aforesaid, but to make a road from Columbus to Shelbyville, the nearest terminus of said road being forty-six miles distant from Madison."

2. That the bonds were issued without the petition or memorial of two-thirds of the freeholders of said city requesting the common council to take the stock and issue the bonds.

The court below gave judgment in the case, which was upon the pleadings wholly, for the city. On error here, the validity of the defenses -- as in the court below -- were the points in issue.

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MR. JUSTICE NELSON delivered the opinion of the Court:

One point of objection to the bonds is that the Columbus & Shelby Railroad does not, by the terms of its charter or in fact, terminate at the City of Madison, and hence, that the road is not within the description of one in which the city was authorized to take stock.

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The words are "to take stock in any chartered company for making a road or roads to the said city." It is supposed that the authority to subscribe is tied down to a chartered road, the line of which comes within the limits of the city, and that the words are to be taken in the most literal and restrictive sense. But this, we think, would be not only a very narrow and strained construction of the terms of the clause, but would defeat the manifest object and purpose of it.

The power was sought and granted with the obvious idea of enabling the city to promote its commercial and business interests by affording a ready and convenient access to it from different parts of the interior of the state, and thus to

compete with other cities on the Ohio River and in the interior which were or might be in the enjoyment of railroad facilities. This object and purpose, we think, should be kept constantly in view in giving a construction to the clause in the charter. For while it will operate to prevent a narrow and fruitless interpretation, it will have the effect of guarding against any abuse or unreasonable extension of the power.

We think it quite clear a subscription to a road wholly unconnected with roads leading to the city would not be within its fair meaning and intent, but are equally satisfied that a subscription to a road in extension and prolongation of one leading into the city is within it.

It will be admitted if a railroad had been chartered originally from the City of Madison to Shelbyville by the way of Columbus, a subscription to the stock would have come within the very words of the charter, and what difference, in good sense or principle, or with reference to the object and purpose of the clause, is there between that case and the one before us? The object of the subscription in the first was to extend the facilities of railroad communication through the interior between the two towns, the termini of the road. In the second, as a road had already been made to Columbus and in operation, the intercommunication is accomplished by a subscription to a line from Columbus to Shelby. The

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difference between the two cases is simply a dispute upon words.

The terms of the clause do not limit the subscription to one road or to one company, "road or roads in any chartered company." The argument, therefore, against the power rests exclusively upon the effect to be given to the concluding words "to said city." We have already considered and given our construction of them.

It was strongly argued that upon this construction great abuses may be committed by the city corporation in subscriptions of stock to remote companies, in which it would have but little, if any, interest or advantage. In the construction of the grant of powers, extreme cases may be suggested against it which it is difficult to

answer. But in the present and kindred cases, something may be trusted to the wisdom and integrity, as well as the interest, of the body appointed to execute the power.

Another objection taken is that the proviso requiring a petition of two-thirds of the citizens who were freeholders of the city was not complied with. As we have seen, the bonds signed by the mayor and clerk of the city recite on the face of them that they were issued by virtue of an ordinance of the common council of the city, passed September 2, 1852. This concludes the city as to any irregularities that may have existed in carrying into execution the power granted to subscribe the stock and issue the bonds, as has been repeatedly held by this Court.

Our conclusion upon the whole case is that full power existed in the defendants to issue the bonds, and that the plaintiffs are entitled to recover the interest coupons in question. Even if the case had been doubtful, inasmuch as the city authorities have given this construction to the charter, and bonds have been issued and in the hands of *bona fide* purchasers for value, we should have felt bound to acquiesce in it.

*Judgment reversed with costs, and cause remanded, etc.*

* viii, subdivision 38.

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