

**Havemeyer Vs. Iowa County**

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**SooperKanoon Citation :** [sooperkanoon.com/81307](http://sooperkanoon.com/81307)

**Court :** US Supreme Court

**Decided On :** 1865

**Appeal No. :** 70 U.S. 294

**Appellant :** Havemeyer

**Respondent :** Iowa County

**Judgement :**

Havemeyer v. Iowa County - 70 U.S. 294 (1865)

U.S. Supreme Court Havemeyer v. Iowa County, 70 U.S. 3 Wall. 294 294 (1865)

**Havemeyer v. Iowa County**

**70 U.S. (3 Wall.) 294**

*ON CERTIFICATE OF DIVISION AMONG THE*

*JUDGES OF THE CIRCUIT COURT OF WISCONSIN*

## **SYLLABUS**

1. The case of [Gelpcke v. City of Dubuque](#), 1 Wall. 175, affirmed and enforced, and the doctrine reasserted that if a contract, when made, was valid by the constitution and laws of a state as then expounded by

the highest authorities whose duty it was to administer them, no subsequent action by the legislature or judiciary can impair its obligation.

2. Where the judges of the circuit court certify a division of opinion to this Court for its judgment, this Court will not return an answer unless the question raised involve a distinct legal point and sufficient facts are set forth to show its bearing on the rights of the parties. Hence no answer will be given to a proposition merely abstract.

The Constitution of Wisconsin, adopted in 1848, provides that "*no general law shall be in force until published,*" and an act of 1852 makes it the *duty* of the secretary of state and the *attorney-general* to divide all the laws passed by the legislature into two classes, and directs that each class shall be published in a separate volume; that the first class shall include laws of a *general nature*; the second class all laws which are not included in the first class; and that "the title pages of the respective volumes shall express whether they contain acts of a *general nature* or the *private and local* acts," &c.;

*Subsequently* to the passage of this act of 1852 -- that is to say, in *March, 1853* -- the Legislature of Wisconsin passed an act authorizing counties through which a certain railroad should pass -- Iowa County being one of the counties -- to aid its construction by subscribing to its stock and issuing bonds of the county to pay for it. But by the terms of the act, no bonds were to be issued except a majority of the electors should authorize the issue by vote at an election, the mode of holding which and the duties of the county officers in regard thereto were prescribed in the statute.

This Act of *March, 1853*, coming, soon after its passage and in ordinary course, before the secretary of state and attorney-general for classification, they decided that it was not an act of a general nature, but was a local act, and classified it accordingly. *No volume containing the act was published till October, 1853.*

Between these two dates -- and between the time, of course, when the secretary of state and the attorney-general classified the act as a local act and the time when the act was "published" in a volume -- the election, which the act itself authorized, was held and the bonds were issued by the county. A number of them passed into the possession of one Havemeyer, and the interest on them being unpaid, he now brought debt in the Circuit Court of Wisconsin to obtain payment of it.

On the trial, the judges of the circuit court were divided in opinion, and sent here a certificate of division accordingly, on the following questions:

1. Whether the Act of March, 1853, authorizing the subscription, and under which the bonds were issued, is a "general law" within the meaning of the Constitution of Wisconsin.
2. Whether the said act, not being published as a general act, and having been first published, after its passage, in the volume of local and private acts, in October, 1853, and *after* the issuing of the bonds, is not such an exercise of power by the state government or legislature, showing that the act is not a general act, and is binding on the courts.
3. Whether, if the said act is such a general law, any act or omission of the said county, its officers or electors, short of an election under the act, after the act was published in October, 1853, will render the bonds valid, or estop the defendant from questioning their validity in the hands of *bona fide* holders.

The case came here, of course, under the act of Congress of 29th April, 1802, which authorizes a decision of *this* Court upon it, "whenever any question shall *occur* before a circuit court upon which the opinions of the judges shall be opposed," and a certificate of it is sent up.

There were no recitals on the bonds, and the record disclosed no great deal more than the act authorizing the election, subscription, issue, and the fact that these had all been made, and that Havemeyer was owner of the instruments now due and unpaid.

The difficulty of resolving the question below was caused

Page 70 U. S. 296

in part, perhaps, from a conflict in the decisions in the Supreme Court of Wisconsin as to the character of the act of March, 1853, or of others just like it. The late decisions of that tribunal, beginning with *State v. Leon*, A.D. 1859, [ [Footnote 1](#) ] followed by several others afterwards, [ [Footnote 2](#) ] held the acts to be general laws, herein departing from the view taken, A.D. 1858, in *Hewett v. Town of Grand Chute*, [ [Footnote 3](#) ] where a contrary idea was assumed as of course. And how far this departure from precedent was owing to a truer conception of the nature of general and particular laws, and how far to the fact, that the judiciary of Wisconsin was a body elected by popular suffrage at short intervals, and which might have come to the bench suffused with the feelings and ideas and wishes of a constituency wishing to disown an obligation which it had been found much easier to contract than to pay, was a matter not seen perfectly alike by all sides.

Page 70 U. S. 302

MR. JUSTICE SWAYNE delivered the opinion of the Court.

In the view which we have taken of the first two questions which are presented by the certificate of division for our consideration in this case, they may be properly considered together. They are:

1. Whether the act in question is a general law within the meaning of the Constitution of Wisconsin.
2. Whether the act not being published as a general act, and having been first published after its passage in the volume of local and private acts, and after the issuing of the bonds, is not such an exercise of power by the state government or legislature, showing that the act is not a general act, as is binding on the courts.

The secretary of state and the attorney-general decided that the act was not a general law, but a local act. This decision as to the character of the act was made by those upon whom the law devolved that duty. It is not suggested that the decision was not fairly made, nor is it denied that it was in accordance with the rule which has prevailed down to that time, and which prevailed subsequently until the supreme court assed upon the subject in the case of the *State v. Leon*, which was decided in the year 1859.

This action is conclusive as to the executive department of the government prior to that period, and it is entitled to the greater weight from the fact that the highest law officer of the state participated in the decision.

The subject came incidentally under the consideration of the supreme court of the state in *Hewett v. Town of Grand Chute*. The question in that case was whether a statute, in all respects identical with the one under which these securities were issued as regards the questions before us, was pleaded as a private act should be. The question whether it was a private act was not made in the case. That

Page 70 U. S. 303

was impliedly conceded by the counsel on both sides. The language of the court in this case has been quoted and commented on at the bar. [ [Footnote 4](#) ] We need not repeat it. It presents a clear judicial recognition by the highest court of the state in accordance with the previous determination of the executive department. The executive and judicial departments were in harmony upon the subject. This case was decided in 1858. It shows that understanding of the bar and the bench down to that time.

Prior to that period no intimation had been given by any department of the government that such statutes were to be regarded otherwise than as local in their character, and broadly distinguished from general laws within the meaning of the constitution.

The subsequent adjudications in the *State v. Leon*, decided in 1859, and the cases which followed it, hold that such statutes are "of a general nature," and have

no validity until published. But being long posterior to the time when the securities were issued, they can have no effect upon our decision and may be laid out of view. We can look only to the condition of things which subsisted when they were sold. That brings them within the rule laid down by this Court, in *Gelpcke v. City of Dubuque*. In that case it was held, that if the contract, when made, was valid by the constitution and laws of the state, as then expounded by the highest authorities whose duty it was to administer them, no subsequent action by the legislature or judiciary can impair its obligation. This rule was established upon the most careful consideration. We think it rests upon a solid foundation, and we feel no disposition to depart from it.

Whether the statute here under consideration is intrinsically general or local in its character, is a question which we have not found it necessary to consider.

The third question presents merely an abstract proposition. No facts are disclosed in the record which show that it has arisen or can hereafter arise in the case. Under such

Page 70 U. S. 304

circumstances it is the settled practice of this Court to decline to answer. It is necessary that the question should involve a distinct legal point, and that sufficient facts should be set forth to show its bearing upon the rights of the parties. [ [Footnote 5](#) ] In this case all the facts relied upon as operating to ratify should have been set forth. Any point of disagreement between the judges relating to the subject would then have appeared in its proper light and could have been definitely answered. As the question is presented the answer, if given, would be equally general, and, like the question, a mere abstraction, which could subserve no useful purpose in the further progress of the cause.

The answer to the first and second question certified up will be that, under the circumstances, the statute referred to must be held in this case to be a local act, and not a general law.

To the third question, for the reasons stated, no answer will be given.

*Order in conformity.*

[ See, on the last point of this case, *supra*, p. <70 U.S. 250|>250, *Daniels v. Railroad Company* -- REP.]

[ [Footnote 1](#) ]

9 Wis. 279.

[ [Footnote 2](#) ]

Subsequent decisions are as follows: *In re Boyle*, 9 Wis. 265, decided A.D. 1859; *Clark v. City of Janesville*, 10 *id.* 136, decided A.D. 1860; *Town of Rochester v. Alfred Bank*, 13 *id.* 432, A.D. 1861; *Berliner v. Town of Waterloo*, 14 *id.* 378, A.D. 1861.

[ [Footnote 3](#) ]

7 Wis. 282.

[ [Footnote 4](#) ]

See *supra*, p. <70 U.S. 298|>298.

[ [Footnote 5](#) ]

[Crooker v. Newton](#), 18 How. 581; [United States v. City Bank of Columbus](#), 19 How. 385.

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