

**Chaffee County Vs. Potter**

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**Court :** US Supreme Court

**Decided On :** Jan-04-1892

**Appeal No. :** 142 U.S. 355

**Appellant :** Chaffee County

**Respondent :** Potter

**Judgement :**

Chaffee County v. Potter - 142 U.S. 355 (1892)

U.S. Supreme Court Chaffee County v. Potter, 142 U.S. 355 (1892)

**Chaffee County v. Potter**

**No. 103**

**Submitted November 24, 1891**

**Decided January 4, 1892**

**142 U.S. 355**

*ERROR TO THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE DISTRICT OF COLORADO*

## SYLLABUS

A statement, in the bond of a municipal corporation, that it is issued under the provisions of the Act of the General Assembly of Colorado of February 21, 1881, and in conformity with its provisions; that all the requirements of law have been fully complied with; that the total amount of the issue does not exceed the limits prescribed by the constitution of that state, and that the issue of the bonds had been authorized by a vote of a majority of the duly qualified electors of the county voting on the question at a general election duly held, estops the county, in an action by an innocent holder for value, to recover on coupons of such bonds, from denying the truth of these recitals.

When there is an express recital upon the face of a municipal bond that the limit of issue proscribed by the state constitution has not been passed, and the bonds themselves do not show that it had, the holder is not bound to look further.

*Lake County v. Graham*, [130 U. S. 674](#) , and *Dixon County v. Field*, [111 U. S. 83](#) , affirmed and distinguished from this case.

The case is stated in the opinion.

Page 142 U. S. 356

MR. JUSTICE LAMAR delivered the opinion of the Court.

This was an action by Andrew Potter, a citizen of Massachusetts, against the Board of County Commissioners of Chaffee County, Colorado, on a large number of interest-bearing coupons attached to certain bonds issued by that county in 1882 for the purpose of funding its floating indebtedness.

The following is a copy of one of the bonds and coupons:

Page 142 U. S. 357

" No. \_\_\_\_ . \$1,000"

"United States of America, County of Chaffee, State of Colorado."

" *Funding Bond*"

" (*Series A.*)"

"The County of Chaffee, in the State of Colorado, acknowledges itself indebted and promises to pay to \_\_\_\_\_ or bearer one thousand dollars, lawful money of the United States, for value received, redeemable at the pleasure of said county after ten years, and absolutely due and payable twenty years from the date hereof at the office of the treasurer of said county, in the Town of Buena Vista, with interest thereon at the rate of eight percent per annum, payable semiannually on the first day of March and the first day of September in each year at the office of the county treasurer aforesaid, or at the banking-house of Kountz Brothers, in the City of New York at the option of the holder, upon the presentation and surrender of the annexed coupons as they severally become due. This bond is issued by the Board of County Commissioners of said Chaffee County in exchange at par for valid floating indebtedness of the said county, outstanding prior to August 31, 1882, under and by virtue of, and in full conformity with, the provisions of an Act of the General Assembly of the State of Colorado entitled 'An act to enable the several counties of the state to fund their floating indebtedness,' approved February 21, 1881, and it is hereby certified that all the requirements of law have been fully complied with by the proper officers in the issuing of this bond. It is further certified that the total amount of this issue does not exceed the limit prescribed by the Constitution of the State of Colorado, and that this issue of bonds has been authorized by a vote of a majority of the duly qualified electors of the said County of Chaffee voting on the question at a general election duly held in said county on the seventh day of November, A.D. 1882. The bonds of this issue are comprised in three series, designated 'A,' 'B,' and 'C,' respectively, the bonds of series A

Page 142 U. S. 358

being for the sum of one thousand dollars each, those of series B for the sum of five hundred dollars each, and those of series C for the sum of one hundred

dollars each. This bond is one of series A. The faith and credit of the County of Chaffee are hereby pledged for the punctual payment of the principal and interest of this bond. In testimony whereof the Board of County Commissioners of the said County of Chaffee have caused this bond to be signed by their chairman, countersigned by the county treasurer, and attested by the county clerk under the seal of the county, this first day of December, A.D. 1882."

" \_\_\_\_\_ ,"

" *Chairman Board of County Commissioners* "

"Attest: \_\_\_\_\_, *County Clerk* "

"[County Seal]"

"Countersigned: \_\_\_\_\_, *County Treasurer* "

" \$\_\_\_\_\_ (*Coupon*) \$\_\_\_\_\_ "

"The County of Chaffee, in the State of Colorado, will pay the bearer \_\_\_\_\_ dollars at the office of the County Treasurer, in the Town of Buena Vista, or at the banking-house of Kountz Brothers, in the City of New York, on the first day of being six months' interest on funding bond."

"No. \_\_\_\_ Series \_\_\_\_ . E. B. JONES, County Treasurer"

The plaintiff, as the holder of a large number of the coupons of each series, alleged in his declaration that all the proceedings required by the statutes of the state to be taken in the matter of the issue and registration of the bonds had been taken before the bonds were put on the market, that the bonds were therefore legal in all respects as valid obligations of the county, and that, as the *bona fide* holder for value of the interest coupons, he had presented them for payment at the place required, and payment had been refused. Wherefore he prayed judgment for the amount of said coupons, with interest -- in all, \$9,648.

The defenses set up in the answer were that the bonds had not been authorized by a vote of the qualified voters of the county, and no bonds had been authorized to be exchanged for the warrants of the county, and the board therefore never had any jurisdiction to issue them; that the bonds, and each of them, were issued in violation of 6, art. 11, of the constitution of the state, and the debt which they assumed to fund was contracted in violation of said provision of the constitution, and that the bonds were issued by the board of county commissioners without any consideration valid in law, as plaintiff well knew when he received the coupons sued on.

A demurrer to the answer, on the ground that it was not a sufficient defense to the action, was sustained by the circuit court, and, the defendants electing to stand by their pleading, judgment was entered in favor of the plaintiff for the full amount of his claim, with interest. 33 F. 614. This writ of error is prosecuted to review that judgment.

The ground upon which the circuit court based its decision and judgment was that the county should be estopped by the recitals in the bonds from pleading the defenses set up in the answer.

The act of the legislature under the authority of which the bonds were issued is set out in the margin.   \* It is the same

Page 142 U. S. 360

act under which certain bonds were issued by Lake county, Colorado, which bonds were under consideration in Lake

Page 142 U. S. 361

*County Graham*, 130 U. S. 674 . The bonds in that case were quite similar to those now under consideration, differing

Page 142 U. S. 362

only, as regards their recitals, in this: that the bonds here contain the additional recital that "the total amount of this issue does not exceed the limit prescribed by the Constitution of the State of Colorado," and do not show upon their face, as did those in that case, how many bonds were issued, or how large each series was.

The provision of the Constitution of 1876 referred to, both in this case and in that article 11, sec. 6, is as follows:

"No county shall contract any debt by loan in any form, except for the purpose of erecting necessary public buildings, making or repairing public roads and bridges, and such indebtedness contracted in anyone year shall not exceed the rates upon the taxable property in such county, following, to-wit: counties in which the assessed valuation of taxable property shall exceed five millions of dollars, one dollar and fifty cents on each thousand dollars thereof; counties in which such valuation shall be less than five millions of dollars, three dollars on each thousand dollars thereof, and the aggregate amount of indebtedness of any county, for all purposes, exclusive of debts contracted before the adoption of this constitution, shall not at any time exceed twice the amount above herein limited unless when, in manner provided by law, the question of incurring such debt shall at a general election be submitted to such of the qualified electors of such county as in the year last preceding such election shall have paid a tax upon property assessed to them in such county, and a majority of those voting thereon shall vote in favor of incurring the debt; but the bonds, if any, be issued therefor shall not run less than ten years, and the aggregate amount of debt so contracted shall not at any time exceed twice the rate upon the valuation last herein mentioned, provided that this section shall not apply to counties having a valuation of less than one million of dollars."

We held in that case that the county was not estopped from

Page 142 U. S. 363

pleading the constitutional limitation, because there was no recital in the bonds in regard to it, and because also, the bonds showing upon their face that they were

issued to the amount of \$500,000, the purchaser, having that data before him, was bound to ascertain from the records the total assessed valuation of the taxable property of the county, and determine for himself, by a simple arithmetical calculation, whether the issue was in harmony with the constitution and that the bonds, having been issued in violation of that provision of the constitution, were not valid obligations of the county. Our decision was based largely upon the ruling of this Court in *Dixon County v. Field*, [111 U. S. 83](#) . To the views expressed in that case we still adhere, and the only question for us now to consider therefore is do the additional recitals in these bonds above set out, and the absence from their face of anything showing the total number issued of each series, and the total amount in all, estop the county from pleading the constitutional limitation?

In our opinion, these two features are of vital importance in distinguishing this case from *Lake County v. Graham* and *Dixon County v. Field*, and are sufficient to operate as an estoppel against the county. Of course, the purchaser of bonds in open market was bound to take notice of the constitutional limitation on the county with respect to indebtedness which it might incur. But when, upon the face of the bonds, there was an express recital that that limitation had not been passed, and the bonds themselves did not show that it had, he was bound to look no further. An examination of any particular bond would not disclose, as it would in the *Lake County* case and in *Dixon County v. Field*, that, as a matter of fact, the constitutional limitation had been exceeded in the issue of the series of bonds. The purchaser might even know--indeed it may be admitted that he would be required to know -- the assessed valuation of the taxable property of the county, and yet he could not ascertain by reference to one of the bonds and the assessment roll whether the county had exceeded its power, under the constitution, in the premises. True, if a purchaser had seen the whole issue of each series of bonds, and

Page 142 U. S. 364

then compared it with the assessment roll, he might have been able to discover whether the issue exceeded the amount of indebtedness limited by the constitution. But that is not the test to apply to a transaction of this nature. It is not

supposed that any one person would purchase all of the bonds at one time, as that is not the usual course of business of this kind. The test is what does each individual bond disclose? If the face of one of the bonds had disclosed that, as a matter of fact, the recital in it with respect to the constitutional limitation was false, of course the county would not be bound by that recital, and would not be estopped from pleading the invalidity of the bonds in this particular. Such was the case in *Lake County v. Graham* and *Dixon County v. Field*. But that is not this case. Here, by virtue of the statute under which the bonds were issued, the county commissioners were to determine the amount to be issued, which was not to exceed the total amount of the indebtedness at the date of the first publication of the notice requesting the holders of county warrants to exchange their warrants for bonds at par. The statute, in terms, gave to the commissioners the determination of a fact -- that is, whether the issue of bonds was in accordance with the constitution of the state and the statute under which they were issued -- and required them to spread a certificate of that determination upon the records of the county. The recital in the bond to the effect that such determination has been made and that the constitutional limitation had not been exceeded in the issue of the bonds, taken in connection with the fact that the bonds themselves did not show such recital to be untrue, under the law estops the county from saying that it is untrue. *Town of Coloma v. Eaves*, [92 U. S. 484](#) ; *Town of Venice v. Murdock*, [92 U. S. 494](#) ; *Marcy v. Township of Oswego*, [92 U. S. 637](#) ; *Wilson v. Salamanca*, [99 U. S. 499](#) ; *Buchanan v. Litchfield*, [102 U. S. 278](#) ; *Northern Bank v. Porter Township*, [110 U. S. 608](#) .

The rule respecting the binding force of recitals in bonds is well stated in *Town of Coloma v. Eaves* as follows:

"Where legislative authority has been given to a municipality or to its officers to subscribe for the stock of a railroad company, and

Page 142 U. S. 365

to issue municipal bonds in payment, but only on some precedent condition, such as a popular vote favoring the subscription, and where it may be gathered from the

legislative enactment that the officers of the municipality were invested with power to decide whether the condition precedent has been complied with, their recital that it has been, made in the bonds issued by them and held by a *bona fide* purchaser, is conclusive of the fact, and binding upon the municipality, for the recital is itself a decision of the fact by the appointed tribunal."

92 U.S. [92 U. S. 491](#) .

In *Buchanan v. Litchfield*, while holding that the bonds were in excess of the amount that could be legally issued and that the recitals in the bonds were not sufficient to estop the municipality from pleading a want of authority to issue them, the Court say:

"As therefore neither the constitution nor the statute prescribed any rule or test by which persons contracting with municipal corporations should ascertain the extent of their 'existing indebtedness,' it would seem that if the bonds in question had contained recitals which, upon any fair construction, amounted to a representation on the part of the constituted authorities of the city that the requirements of the constitution were met -- that is, that the city's indebtedness, increased by the amount of the bonds in question, was within the constitutional limit -- then the city, under the decisions of this Court, might have been estopped from disputing the truth of such representations as against a *bona fide* holder of its bonds. The case might then, perhaps, have been brought within the rule announced by this Court in *Town of Coloma v. Eaves*. "

And again:

"Had the bonds made the additional recital that they were issued in accordance with the constitution, or had the ordinance stated in any form that the proposed indebtedness was within the constitutional limit, or had the statute restricted the exercise of the authority therein conferred to those municipal corporations whose indebtedness did not at the time exceed the constitutional limit, there would have been ground for holding that the city could not, as against the plaintiff, dispute the fair inference to be drawn from such recital or statement as to the extent of its

existing indebtedness."

102 U.S. [102 U. S. 292](#) .

Page 142 U. S. 366

We think this case comes fairly within the principles of those just cited, and that it is not governed by *Dixon County v. Field* and *Lake County v. Graham*, but is distinguishable from them in the essential particulars above noted.

*Judgment affirmed.*

MR. JUSTICE GRAY dissented.

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"SEC. 1. It shall be the duty of the county commissioners of any county having a floating indebtedness exceeding ten thousand dollars, upon the petition of fifty of the electors of said counties, [county,] who shall have paid taxes upon property assessed to them in said county in the preceding year, to publish, for the period of thirty days, in a newspaper published within said county, a notice requesting the holders of the warrants of such county to submit, in writing, to the board of county commissioners, within thirty days from date of the first publication of such notice, a statement of the amount of the warrants of such county, which they will exchange at par and accrued interest for the bonds of such county, to be issued under the provisions of this act, taking such bonds at par. It shall be the duty of such board of county commissioners at the next general election occurring after the expiration of thirty days from the date of the first publication of the notice aforementioned, upon the petition of fifty of the electors of such county who shall have paid taxes upon property assessed to them in said county in the preceding year, to submit to the vote of the qualified electors of such county who shall have paid taxes on property assessed to them in said county in the preceding year the question whether the board of county commissioners shall issue bonds of such county, under the provisions of this act, in exchange at par, for the warrants of such county issued prior to the date of the first publication of the aforesaid notice; or they may

submit such question at a special election, which they are hereby empowered to call for that purpose at any time after the expiration of thirty days from the date of the first publication of the notice aforementioned, on the petition of fifty qualified electors as aforesaid, and they shall publish, for the period of at least thirty days immediately preceding such general or special election, in some newspaper published within such county, a notice that such question will be submitted to the duly qualified electors as aforesaid at such election. The county treasurer of such county shall make out and cause to be delivered to the judges of election, in each election precinct in the county, prior to the said election, a certified list of the taxpayers in such county who shall have paid taxes upon property assessed to them in such county in the preceding year, and no person shall vote upon the question of the funding of the county indebtedness unless his name shall appear upon such list, nor unless he shall have paid all county taxes assessed against him in such county in the preceding year. If a majority of the votes lawfully cast upon the question of such funding of the floating county indebtedness shall be for the funding of such indebtedness, the board of county commissioners may issue to any person or corporation holding any county warrant or warrants issued prior to the date of the first publication of the aforementioned notice coupon bonds of such county in exchange therefor at par. No bonds shall be issued of less denomination than one hundred dollars, and, if issued for a greater amount, then for some multiple of that sum, and the rate of interest shall not exceed eight percent per annum. The interest to be paid semiannually at the office of the county treasurer, or in the City of New York at the option of the holders thereof. Such bonds to be payable at the pleasure of the county after ten years from the date of their issuance, but absolutely due and payable twenty years after date of issue. The whole amount of bonds issued under this act shall not exceed the sum of the county indebtedness at the date of the first publication of the aforementioned notice, and the amount shall be determined by the county commissioners, and a certificate made of the same, and made a part of the records of the county, and any bond issued in excess of said sum shall be null and void, and all bonds issued under the provisions of this act shall be registered in the office of the state auditor, to whom a fee of ten cents shall be paid for recording each bond."

"SEC. 2. All bonds which may be issued under the provisions of this act shall be signed by the chairman of the board of county commissioners, countersigned by the county treasurer of the county, and attested by the clerk of said county, and bear the seal of the county upon each bond, and shall be numbered and registered in a book kept for that purpose by the county treasurer in the order in which they are issued; each bond shall state upon its face the amount for which the same is issued, to whom issued, and the date of its issuance."

"SEC. 3. The county commissioners shall be authorized to prescribe the form of such bonds and the coupons thereto, and to provide for the half-yearly interest accruing on such bonds actually issued and delivered. They shall levy annually a sufficient tax to fully discharge such interest, and for the ultimate redemption of such bonds they shall levy annually, after nine years from the date of such issuance, such tax upon all the taxable property in their county as shall create a yearly fund equal to ten (10) percent of the whole amount of such bonds issued, which fund shall be called the 'redemption fund.' And all taxes for interest on and for the redemption of such bonds shall be paid in cash only, and shall be kept by the county treasurer as a special fund, to be used in payment of interest on and for the redemption of such bonds only, and such taxes shall be levied and collected as other taxes."

"SEC. 4. It shall be the duty of the county treasurer, when there are sufficient funds in his hands to the credit of the redemption fund, to pay in full the principal and interest of any such bonds, immediately to call in and pay as many of such bonds, and accrued interest thereon, as the funds on hand will liquidate, as hereinbefore provided. Such bond or bonds shall be paid in the order of their number, and when any bonds or coupons issued under this act are taken up, it shall be the duty of such treasurer to certify his action to the board of county commissioners, who shall cancel the same so that they can be plainly identified, and cause a record to be made of the same; and when it is desired to redeem any of such bonds, the county treasurer shall cause to be published for thirty days, in some newspaper at or nearest the county seat of the county, and in a newspaper published in the City of Denver, a notice that certain county bonds, by numbers

and amounts, will be paid upon presentation, and at the expiration of thirty days such bonds shall cease to bear interest."

"SEC. 5. All persons voting on the question as hereinbefore provided shall vote by separate ballot, which shall be deposited in a box to be used for that purpose only, and on which ballot shall be printed the words, 'For funding county debt,' or 'Against funding county debt,' and if, upon canvassing to [the] vote, which shall be canvassed in the same manner as the vote for county officers, it shall appear that a majority of all votes cast upon the question so submitted are for funding the county debt, then the county commissioners shall be authorized to carry out the provisions of this act, and the canvassing board shall certify the vote, and it shall be made part of the county records. The judges of election shall make and certify to the clerk of the county a separate list of the names of the electors voting upon the question of the funding of the county indebtedness in the order in which the ballot of the elector so voting is received, and each ballot shall be numbered in the order in which it is received, and the number recorded and [on] the said list of voters opposite the name of the voter who presents the ballot."

Laws 1881, p. 85, 1-5.