

ation may, under supposable circumstances, be enough to forbid an implication of power to borrow, it affords no reason for putting a narrow or more restricted construction upon an express grant like the one under consideration. The powers both to tax and to borrow being granted, it is a question of policy, to be decided by the common council, whether, in any instance, resort shall be had to one or the other or both; and if a loan upon negotiable securities is made, the good-faith lender, or purchaser of the bonds, is protected accordingly.

It is also alleged that the bonds called "Redemption Bonds" were issued and used for the purpose of paying debts of different kinds, some of which were a charge upon real estate only, and others upon all taxable property within the city. This fact does not seem to touch the question of power to make the bonds or of the rights of holders. It presents a matter of administration merely, in respect to which good book-keeping only is necessary to protection of all interests; and, in case of any failure or misconduct of officials, the remedy could be had in the courts.

In some of the answers certain inconsistencies are alleged between the dates of bonds and the dates required by the resolutions of the common council, by authority of which the bonds were issued. But these and the like irregularities cannot affect the rights of innocent purchasers, especially as it appears in the complaint that the city paid interest upon the bonds for years, without question of their validity. See *Portsmouth Savings Bank v. Springfield*, *supra*.

The question of usury, under the law of New York, if otherwise in the case, is not available to a corporation. *Diossy*, St. N. Y. 1881, p. 243, § 18; *Butterworth v. O'Brien*, 23 N. Y. 275; *Belmont Branch Bank v. Hoge*, 35 N. Y. 65.

These conclusions make it unnecessary to consider other questions discussed, and especially those in respect to the validity and effect of later legislation upon the charter of Evansville. Demurrer sustained to each paragraph of answer.

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POST v. CITY OF EVANSVILLE.

(Circuit Court, D. Indiana. November 2, 1885)

Demurrer to Complaint.

*T. C. Mather*, for plaintiff.

*McDonald, Butler & Mason* and *J. B. Rucker*, for defendant.

*Woods, J.* This action is upon interest coupons of three series of negotiable bonds of the city of Evansville. The bonds are denominated "Redemption Bonds," and contain recitals to the effect that they were issued in order to pay or redeem other bonds of the city. The objection made to the complaint is that the city had no power to make such bonds. The same question arose in the case of *Portland Savings Bank v. City of Evansville*, *ante*, 389, involving the same series of bonds, and was then decided against the city. The demurrer is therefore overruled.

CASTLE *v.* HUTCHINSON.

(Circuit Court, D. Indiana. November 10, 1885.)

## 1. CROSS-COMPLAINT—ACTION AT LAW.

A cross-complaint is not permissible in a common-law action.

## 2. CONSTITUTIONAL LAW—STATUTE REGULATING FORM OF NOTE GIVEN FOR PATENT-RIGHT.

A state statute providing that any person who may take any obligation in writing for which any patent-right, or right claimed to be a patent-right, shall form the whole or any part of the consideration, shall, before it is signed by the maker, insert in the body thereof, above his signature, the words "given for a patent-right," is unconstitutional.

At Law. Motion to strike out cross-complaint and parts of answer.

*Byfield & Howland and Ward & Davis*, for plaintiff.

*T. H. Nelson*, for defendant.

WOODS, J. A cross-complaint is not permissible in a common-law action. The second paragraph of answer contains a clause to the effect that the notes in suit were made in Indiana, were given for a patent-right, and do not contain in their body the words "given for a patent-right," as required by law. The statute referred to is section 6055, Rev. St. Ind., 1881, which reads as follows:

"Any person who may take any obligation in writing for which any patent-right, or right claimed by him or her to be a patent-right, shall form the whole or any part of the consideration, shall, before it is signed by the maker or makers, insert in the body of said written obligation, above the signature of said maker or makers, in legible writing or print, the words 'given for a patent-right.'"

This law is, I think, clearly unconstitutional. It was so held, in respect to similar laws, in *Helm v. First Nat. Bank*, 43 Ind. 167, following the decision in *Ex parte Robinson*, 2 Biss. 309. See, also, *Grover & Baker S. M. Co. v. Butler*, 53 Ind. 454; *Fry v. State*, 63 Ind. 552; *Toledo Agr. Works v. Work*, 70 Ind. 253.

It is claimed that these cases are inconsistent with the opinion of the supreme court of the United States in *Patterson v. Kentucky*, 97 U. S. 501. But that case has reference to local restrictions upon the sale or use of tangible property; and, notwithstanding the property was manufactured or produced under letters patent, it was held that the enforcement of the statute of the state interfered with no right conferred by the letters patent. The case manifestly has no application here; the notes in suit having been given, not for tangible property, but for a right in letters patent, in respect to which the states can impose no restrictions. Motion sustained.