Weinberger v. Board of Public Instruction, 112 So. 253 (Fla. 1927)

Supreme Court of Florida

Appellant, a citizen and resident of St. Johns County and the owner of taxable property in the school district hereinafter mentioned, as complainant below, brought his bill of complaint against appellees, as defendants below, whereby he sought to enjoin the issue and sale of certain special tax school district bonds for District Number One of St. Johns County.

The Board of Public Instruction of said County proposes to issue the bonds in question upon authority of Section 579,*et seq.,* Rev. Gen. Stats. 1920, as amended, and pursuant to a resolution of the said Board passed April 30, 1926.

Appellant asserts that said resolution attempts to fix the maturities of said bonds contrary to and in violation of Sec. 17 of Art. 12 of the Constitution of Florida, and is therefore void *ab initio* and inoperative.

Appellees, defendants below, interposed a plea to the bill of complaint, setting up a previous decree of the Circuit Court of St. Johns County validating and confirming, in all respects, the bonds in question and decreeing said bonds to be the duly authorized and legally binding obligation of the said Special Tax School District. The procedure resulting in said decree of validation was that authorized and prescribed by Sections 598, and 3296, *et seq.,* Rev Gen. Stats 1920. The decree of validation was entered on July 30, 1926. This suit was instituted on September 9, 1926. Appellant did not intervene in the validation proceedings so as to make himself an actual party thereto, though he might have done so at his election. Nor did the pleadings

in the validation proceeding specifically present the Constitutional question involved in this suit.

Upon argument, the Circuit Judge sustained said plea, *Page 473 denied a temporary injunction, and dismissed the bill of complaint; whereupon complainant appealed.

Sec. 17 of Art. 12, Constitution of Florida, as amended in 1924, controls the issuance of bonds of the character under consideration. That section, after declaring that the Legislature may provide for Special Tax School Districts to issue bonds for the exclusive use of public free schools within any such Special Tar School District, under the circumstances therein stated, further provides, amongst other things:

"* * * Any bonds issued hereunder shall become payable within thirty years from the date of issuance in annual installments which shall commence not more than three years from date of issue. Each annual installment shall be not less than three per cent. of the total amount of the issue. * * *"

According to the resolution of the Board of Public Instruction, pursuant to which it is proposed to issue the questioned bonds, the bonds are to be dated June 1, 1926, are in the aggregate principal sum of $250,000.00, and the maturities are as follows:

Bonds Numbered	Amount	Due
1 to 35 inclusive	$35,000.00	1929
36 to 70 "	35,000.00	1932
71 to 105 "	35,000.00	1935
106 to 140 "	35,000.00	1940
141 to 175 "	35,000.00	1945
176 to 210 "	35,000.00	1950
211 to 250 "	40,000.00	1955

Obviously, the dates of maturity of the several bonds do not conform to the express command of that portion of Sec. 17, Art. 12 of the Florida Constitution, above quoted, which fact is admitted by appellees in their brief. Appellees urge, however, that this is a question which goes "to *Page 474 the power of the Board to issue the bonds and was a proper question to be raised in the proceeding to validate the same"; and since appellant was by statute (Sec. 3296, *et seq*.) made "a party defendant to the proceedings to validate the bonds after the election, and having failed either to intervene in the validating proceedings or to appeal to this (the Supreme) Court from the decree of validation, he (the appellant) is now barred both by the statute and the opinion of this Court in the case of Thompson v. Town of Frostproof (89 Fla. 92, 103 So.2d Rep. 118) from raising any question in any court of this State affecting the validity of said bonds."

To support that contention, appellees rely upon the provisions of Section 3296, Rev. Gen. Stats., 1920, authorizing any designated political subdivision issuing bonds under the laws of this State to determine its authority to incur such bonded debt, "and the legality of all proceedings had or taken in connection therewith" in the manner therein prescribed. Appellees also rely upon the further provisions of Sec. 3299, Rev. Gen. Stats., 1920, to the effect that when a decree validating such bonds shall have been rendered, and no appeal taken therefrom within twenty days, or in case such an appeal is taken, then when the decree shall have been affirmed by this Court, such decree: "* * * Shall be forever conclusive as to the validity of said bonds * * * against the * * * taxing district * * * issuing them, and against any tax papers and citizens thereof; and the validity of said bonds * * * shall never be called in question in any Court in this State."

Appellees rely upon the following language from Thompson v. Town of Frostproof, 89 Fla. 92, 103 So.2d Rep. 118:

"Reviewing the law * * * we think there can be no escape from the conclusion that the purpose of a decree *Page 475 validating and confirming bonds thereunder is to put in repose any question of law or of fact that may be subsequently raised affecting the validity of such bonds. This being our deductions, it is a necessary corrolary that in a bond validating suit any question that goes to the power to issue and the validity and regularity of the issuance of said bonds is proper to be raised."

Appellees also cite and rely upon Steen v. Board of Public Instruction, 80 Fla. 146, 85 So.2d Rep. 684, and also the following statement in Lewis v. Leon County, ____ Fla. ____, 107 So.2d Rep. 146:

"* * * it being the purpose of a decree validating and confirming bonds under the law of this State to put in repose all questions of law or fact that may be raised affecting the validity of such bonds."

The language used by this Court in reference to the purpose of existing bond validation statutes in the cases just referred to, although apparently broad, was *used* in reference to matters which the Legislature could originally prescribe, regulate, dispense with or subsequently cure, or which the individual affected could lawfully waive or in respect to which he could estop himself. Such language should be read and understood in connection with the issues presented in those cases, and in the light of the organic limitations upon the power of the Legislature.

Thompson v. Town of Frostproof, *supra,* the Court had under consideration the *statutory* power of a municipality to issue certain bonds. The language employed in that case was used in respect to that situation. No question of power, as affected by a violation of a mandatory constitutional provision was involved. Steen v. Board of Public Instruction, *supra,* also involved a question of *statutory* powers, no constitutional question being presented. The

language hereinabove quoted from Lewis v. Leon County, *Page 476 *supra,* was therein used recitatively, — not as a decision of the proposition.

Since our validation statute (Sec. 3296, *et seq.,* was adopted largely from the Georgia statute on the same subject, appellees cite several Georgia cases construing the statute in that State. In none of these cases, however, was it decided that a tax payer, otherwise entitled to raise the question, was precluded by a validating decree, rendered pursuant to the statute, from subsequently questioning the validity of bonds issued in violation of a mandatory constitutional provision, and hence void *ab initio*. In Smith v. Mayor, etc. of the City of Dublin, 39 S.E. Rep. 327, referred to in the Florida case of Thompson v. Town of Frostproof, *supra,* the questions involved were, first, the sufficiency of the notice calling an election to determine whether the bonds should be issued. The election is required by the Constitution, but the notice, and the contents thereof, are prescribed by statute only, so that a non-compliance with the statute might render the bonds irregular and voidable, but not void. The second question was the sufficiency of the notice to the Solicitor General of the result of such election, which notice is also prescribed by statute. The following language also used in that case is pertinent here: "Certainly, it was never the intention of the General Assembly that bonds which had not received the assent of the number of voters, as required by the Constitution, could be validated".

The question involved in Woodall v. Town of Adel, 50 S.E. Rep. 102, also involved the legality and sufficiency in law of the notice calling the election, but no question of the violation of a mandatory constitutional provision was presented.

In Lippitt v. City of Albany, 63 S.E. Rep. 33, certain constitutional questions were presented, which concerned *Page 477 the constitutional validity of the validation statute. The only questions therein raised against the validity of the

bonds themselves were matters of mere irregularity, which the Court held should have been raised in the validation proceeding. In that case it was further said: "Some of the grounds assert unconstitutionality in the Act referred to (the validating statute), on the contention that it seeks to confer power on counties and municipalities to incur debt without the consent of two-thirds of the voters thereof (as required by the Constitution of Georgia), by attempting to confirm and authorize an issue of bonds which may not have been authorized by the necessary two-thirds vote; and that the Acts seeks to rise superior to the Constitution and preclude inquiry into the validity of the bonds on such a constitutional ground: * * * This contention is based on a misconception of the purpose of the Act of 1897. It was not the purpose to validate invalid or irregular bonds".

Distinctions, similar to those above pointed out, are apparent in the other Georgia cases cited by appellees, as well as in the Oklahoma case of State v. West, 118 Pac. Rep. 146.

Speaking with reference to a statute purporting to authorize the issuance of bonds, but which was in violation of the Constitution, the Supreme Court of Georgia, in James v. City of Blakely, 84 S.E. Rep. 431, said: "It was argued that the plaintiffs were estopped from instituting this proceeding. * * * Perhaps a person may so act as to estop himself from attacking the validity of a law, but an unconstitutional act can not become valid by age. Unconstitutionality is not like minority, a thing which may be outgrown in a few years. The Constitution is the supreme law. It speaks to be obeyed".

In his work on Constitutional Limitations, Judge Cooley expressed the same principal as follows: "Acquiescence *Page 478 for no length of time can legalize a clear usurpation of powers where the people have plainly expressed their will and the Constitution has appointed judicial tribunals to enforce it".

The questions presented in Crow v. Board of Supervisors (La.), 76 So.2d Rep. 183, also cited by appellees, involved, first, the regularity of a statutory election and the proceedings immediately leading to and predicated thereon, and, second, whether the action of the public authorities in fixing the boundaries of a road district was *ultra vires*. The actions assailed all depend for their validity upon statute. No question of a violation of a mandatory constitutional provision was involved. The language used by the Court in that case should be construed with reference to the issues, and in so far as it may refer to acts done in violation of a mandatory provision of the Constitution, it appears to us to be *dictum*.

Sec. 17 of Art. 12, Constitution of Florida, is a limitation upon the legislative power. That section expressly commands that "any bonds issued hereunder shall become payable * * * in annual installments * * *. Each annual installment shall not be less than three per cent of the total amount of the issue * * * ".

That section of the Constitution contemplates the issuance of bonds maturing annually, *i. e.* each year, commencing not more than three years from the date of issue, each of such annual installments to be not less than three per cent of the total amount of the issue.

The principle is well established that where the Constitution expressly provides the manner of doing a thing, it impliedly forbids its being done in a substantially different manner. Even though the Constitution does not in terms prohibit the doing of a thing in another manner, the fact that it has prescribed the manner in which the thing shall be done is itself a prohibition against a different manner *Page 479 of doing it. Holland v. State, 15 Fla. 455, text 523. See also Grantham v. Board of Public Instruction, 77 Fla. 540, 82 South. Rep. 52. Therefore, when the Constitution prescribes the manner of doing an act, the manner prescribed is exclusive, and it is beyond the power

of the Legislature to enact a statute that would defeat the purpose of the constitutional provision. State*ex rel.* Murphy v. Barnes, 24 Fla. 29, 3 So.2d Rep. 433; State*ex rel.* Church v. Yeats, 74 Fla. 509, 77 So.2d Rep. 262; Leonard v. Franklin, 84 Fla. 402, 93 So.2d Rep. 688. See also: Cooley's Const. Lim. (7th Ed.), p. 114; Coleman v. Town of Eutah, 47 So.2d Rep. 703; 5 Tex. 418[5 Tex. 418]; District Township v. Dubuque, 7 Iowa 262. "Every word of a State Constitution should be given its intended meaning and effect, and essential provisions of a Constitution are to be regarded as mandatory." Crawford v. Gilchrist, 64 Fla. 41, 59 So.2d Rep. 963; Ann. Cas. 1914-B 916. See also: 12 C. J. 707, 740; 19 Cyc. 23. Unless therefore, the resolution of the Board of Public Instruction follows the mandate of the Constitution in fixing the maturities of the bonds, as well as in all other respects, such resolution is a nullity, and bonds issued pursuant thereto would be void *ab initio*.

The Legislature itself, even by express enactment, could not lawfully authorize the issuance of bonds contrary to the express and mandatory limitations of the Constitution, nor could the Legislature by subsequent Act, nor the Courts by decree, validate bonds which are void *ab initio* because issued in violation of controlling mandatory organic limitations. If the Legislature, by a validating Act, or the Courts by procedure and decree authorized only by legislative enactment, can vitalize bonds issued in violation of constitutional mandate, then such legislative or judicial action would overreach the Constitution, and the organic *Page 480 provisions, contrary to which such bonds were issued, would be futile. See: Brown v. City of Lakeland, 61 Fla. 508, 54 South. Rep. 716; Munroe v. Reeves, 71 Fla. 612, 71 So.2d Rep. 922. "The general and established proposition is that, what the Legislature could have authorized, it can ratify, if it can authorize at the time of ratification." Charlotte Harbor Northern Ry. Co. v. Welles, 260 U.S. 8; 67 Law. Ed. 100, affirming *idem,* 78 Fla. 227, 82 So.2d Rep. 770. See also: Givens v. County of Hillsborough, 46 Fla. 502, 35 So.2d Rep. 88. See also: 5

McQuillin Munic. Corp. (1913), Section 2310, and cases cited.

It will hardly be doubted that a statute purporting to authorize the issuance of bonds in a manner plainly violative of an express and mandatory constitutional provision would be void. It was said by this Court in State *ex rel.* Nuveen v. Greer, 102 So.2d Rep. 739, that: "Where bonds are issued pursuant to a valid statute, mere irregularities in issuing the bonds may not affect their validity, but when a statute violates the Constitution in authorizing bonds to be issued, the statute being inoperative as authority for their issue, the bonds are void and the Courts may enjoin their issue or payment." The principle just stated is, of course, applicable to a resolution of a subordinate body. Since the Legislature is without lawful power to directly authorize, or subsequently validate the issuance of bonds in violation of the Constitution, we are unable to see how that result may be lawfully accomplished by indirection, through the medium of a judicial validation proceeding pursuant to, legislative authority.

Appellees urge, however, that we are not now concerned, primarily, with the inherent validity of the proposed bonds, as an initial question, — that matter having been adjudicated by the validation decree in the Circuit Court, from which no appeal was taken, — but that the question now *Page 481 presented is whether appellant is precluded by the validating decree from attacking the validity of the bonds upon the ground asserted by him, namely, that the maturities of the bonds, as fixed by the resolution purporting to authorize the issuance thereof, are contrary to the mandate of the quoted constitutional provision, thereby rendering the resolution a nullity and the bonds void *ab initio*.

In deciding that question, it must be borne in mind that there is a vital distinction between an entire absence of power under the Constitution to issue the bonds involved, — which no Act of the Legislature may remedy, —

and the imperfect or irregular exercise of lawful authority in the issuance of the bonds. Deficiencies of the latter character may be waived, or the complaining tax payer may estop himself with reference thereto. Such deficiencies may be cured by validation proceedings pursuant to Section 3296, *supra*. The Legislature, by a curative statute, may even validate bonds originally issued without authority, provided, the Legislature could have authorized the issuance of the bonds in the first place. See State *ex rel.* Nuveen v. Greer, *supra*. But when bonds are issued in violation of a mandatory provision of the Constitution, as for instance, when in excess of the debt limit fixed by the Constitution (See: Mitchell County v. City National Bank, 39 S.W. Rep. 628, reversed on other grounds, 43 S.W. Rep. 880); or when such bonds have not been authorized by a two-thirds vote of the people, as required by the Constitution (See: Katzenberger v. Aberdeen, 121 U.S. 172; 30 Law. Ed. 911; Sykes v. Columbus, 55 Miss. 115); or, as in the case before us, where the maturities fixed by the issuing body are contrary to the express requirement of the Constitution, such bonds are void *abinitio,* and can not be validated by curative legislation. A validating decree authorized only by legislative enactment is therefore ineffectual to bar an *Page 482 affected tax payer, otherwise entitled so to do and who did not intervene and raise such objection in the statutory validation proceeding, from subsequently resisting the issuance of the bonds on the ground that one of the essential and indispensable steps in the proceedings by which the bonds are to be issued was had in violation of a mandatory provision of the Constitution, a non-compliance with which the complaining tax payer can not waive. See: Coleman v. Town of Eutah, 47 South. Rep. 703; Coleman v. Broad River Twp., 27 S.W. Rep. 774; Walton v. Adair, 97 N.Y. Supp. 868; aff. 8 N.E. Rep. 1121; 12 C. J. 1094, 1095; 15 C. J. 627; 5 McQuillin Munic. Corp., Section 2310.

Where no question of public policy or morals is involved, an individual may waive, and may perhaps estop himself with reference to, constitutional

provisions designed*solely* for the protection of his individual property rights. Cooley's Const. Lim. (7th Ed.) p. 250. See also: Moore v. City of Yonkers, 23 Fed. 485; 9 A. L. R. 590. It is usually competent also, for the Legislature to limit the time within which the individual may exercise rights or privileges arising under constitutional provisions of the character last stated. See Cooley's Const. Lim. (7th Ed.) 815. Although the constitutional provision now under consideration may be designed in part to protect the individual property rights of the tax payer, it is primarily an express and continuing limitation upon the power to issue the bonds. Such a constitutional provision is a continuing command. It may be satisfied only by strict compliance. It is not subject to or susceptible of legislative regulation or restriction upon the time within which a failure to observe the same may be asserted. Bonds issued in violation thereof are void *ab initio*.

At the time of the passage of the resolution of April 30, 1926, the Board of Public Instruction of St. Johns County *Page 483 was, and still is, utterly without power to issue bonds of the character under consideration with maturities as specified in said resolution, and it is beyond the present power of the Legislature either to confer that power or to ratify the action of the Board. As we have seen, the issuing resolution is consequently, — not merely irregular or voidable, — but as authority for the issuance of such bonds it is a nullity and void *ab initio*. In contemplation of law, it does not exist, and such action of the Board, as well as all things predicated thereon, are of no more effect than if such action had never been taken. See Wilson v. Alleghany City, 79 Pac. Rep. 272; Bennet v. Emmetsburg, 115 N.W. Rep. 582; Andre v. Burlington, 117 N.W. Rep. 1082. The proceedings of the Board of Public Instruction in passing the resolution, fixing the maturities of the bonds as therein prescribed, is analogous to one in which a Court or other body has acted in a matter in which it has no jurisdiction over the subject matter. When any court, board or body assumes to act under such circumstances, the

proceeding is not merely void or irregular, but void *ab initio,* resulting only in a nullity.

Analogous also, in principle, are those cases in which it is held, almost universally, that a property owner who has failed at the time and in the manner prescribed by statute to object to the validation or ratification of special assessments for local improvements is not estopped to subsequently question the validity thereof in cases where such assessments are not merely voidable or irregular, but are void *ab initio* because of an inherent jurisdictional defect in the essential procedure culminating in such assessment. Upon that question it is held by the Courts, with great unanimity, that a statute limiting the time within which an action may be brought to contest the validity, or the ratification, of a special assessment made against abutting or *Page 484 adjacent property to pay the cost of local improvements, does not apply so as to bar a subsequent action by an affected property owner to enjoin the entry or collection of such assessment or to cancel the lien thereof as a cloud on his title, when the essential proceedings upon which the assessment is based are void. See Marshall v. City of Leavenworth, 24 Pac. Rep. 975, wherein it was said: "Any assessment made to pay for such improvements would be absolutely null and void, and the parties protesting would not be required, under the aforesaid limitations contained in Sec. 1, Chap. 101, Laws of 1887, to commence any action, within thirty days after the making of the assessment, to set aside the assessments, or to defeat or avoid the same." See also: Steinmiller v. Kansas City, 44 Pac. Rep. 600; Grier v. Kramer, 162 Pac. Rep. 490; City of Henderson v. Lieber, 192 S.W. Rep. 830; 9 A. L. R. 620. See also: Morrow v. Barber Asphalt Paving Co., 111 P. 198, where it was said:

"For the purpose of requiring promptness in making objections to the validity of assessments for such improvements, the Legislature provided 'no suit to set aside the said assessments, or to enjoin the making of same, shall be

brought, or any defense to the validity thereof be allowed after the expiration of thirty days from the time the amount due on each lot or piece of ground liable for such assessment is ascertained.' We do not think this statute can be interposed to aid an assessment which is void on jurisdictional grounds on the face of the proceedings. It should be held to apply only to such defects and irregularities in the proceedings as would render them voidable, but not void. * * * As the proceedings which led up to the assessment were had without jurisdiction, and consequently are without any legal effect upon the property rights of the plaintiffs, the mere failure to act certainly *Page 485 could not alter the situation of either party." See also: Schultz v. Rittenbush, 134 Pac. Rep. 961; Ogden City v. Armstrong, 168 U.S. 224, 42 Law Ed. 444; Elmdorf v. City of San Antonio, 242 S.W. Rep. 185; Milwaukee Elec. Ry. Co. v. Village of Shorewood, 193 N.W. Rep. 94; City of Muscogee v. Nicholson, 171 Pac. Rep. 1102; City of Bartlesville v. Holm, 139 Pac. Rep. 273; 9 A. L. R. 627; Barber Asphalt Paving Co. v. Jurgens,149 P. 560; 9 A. L. R. 597; Glas v. Connata, 121 Ill. App. 215; Bennert v. Emetsburg, 115 N.W. Rep. 582; Gwilliam v. Ogden City, 164 Pac. Rep. 1022; Mills v. Detroit, 54 N.W. Rep. 879; New Whatcom v. Bellingham Bay Imp. Co., 38 Pac. Rep. 1024; Head v. Village of Wood River, 194 Ill. App. 104; Hildreth v. Longmont, 105 Pac. Rep. 107; 9 A. L. R. 738, note. (And see the many other cases cited in 9 A. L. R., pages 590 to 904, inclusive, particularly at pp. 668, 763, 778, 814, 878. See also: Crane v. City of Siloam Springs, 55 S.W. Rep. 955; Randall v. Arkansas City, 217 Pac. Rep. 298; City and County of Denver v. Tihen, 235 Pac. Rep. 777.

It has been held that when bonds are issued in violation of a mandatory provision of the Constitution and are therefore not merely voidable or irregular, but are void for want of power to issue them, no subsequent act or recognition of their validity can so far give vitality to such bonds as to estop a tax payer from denying their legality. Ryan v. Lynch, 68 Ill. 160.

"If a legislative enactment conflicts with an existing provision of the

Constitution, it does not become a law." State*ex rel.* Nuveen v. Greer, 88 Fla. 249, 102 So.2d Rep. 739; 37 A. L. R. 1298. Where a statute purported to authorize a city to issue bonds for a purpose prohibited by the Constitution, and the statute had never been judicially held to be valid, it was held that since there was a total absence of power in the Legislature to pass the statute, the bonds issued *Page 486 thereunder are void, and consequently neither the payment of interest on the bonds by the city nor the acts of its officers or agents in dealing with the property purchased by the bonds, would operate, by way of estoppel, ratification, or otherwise, to render the city liable on such bonds, and, further, that no protection could be afforded a purchaser of such bonds even by a consent judgment in an action based on the bonds. See Parkersburg v. Brown, 106 U.S. 487; 27 Law. Ed. 238. See also: Com. Bank v. Iola, 154 U.S. 617; 22 Law. Ed. 463. See also the cases cited in 37 A. L. R. 1312, and see State *ex rel.* Nuveen v. Greer, *supra*. Nor could bonds so issued be lawfully validated by subsequent legislative act. Of course, where bonds are sold to a *bona fide* purchaser while the statute authorizing the issue thereof is duly adjudged by a competent Court to be valid, such bonds are valid obligations, and, by the force of the Constitution itself, a purchaser is protected from a subsequent decision holding the statute invalid. See State *exrel.* Nuveen v. Greer, *supra*.

As was said in C. B. U. P. R. R. Co. v. Smith, 23 Kan. 745, speaking with reference to the right of a *bona fide* purchaser of void bonds: "It seems to us therefore that the law was in its inception unconstitutional, and that no acts done under it are of any validity or create any estoppel. Every holder of the bonds is chargeable with notice of the law, and all matters affecting its constitutionality." See also: Sutliff v. Lake County Comm'rs., 147 U.S. 230; 37 Law Ed. 145.

For the reasons already stated, the resolution of April 30, 1926, purporting to authorize the issuance of the bonds in question was in direct violation of a

mandatory provision of the Constitution which is not susceptible of waiver. Such resolution was therefore a nullity. From a nullity no rights can arise, and by it no rights are affected, nor *Page 487 can a waiver or estoppel be predicated upon it. The resolution being void, — and not merely irregular or erroneous and therefore only voidable, — the complainant was entitled to ignore it. For the reasons stated, it was and is beyond the power of the Board of Public Instruction to issue bonds of the character under consideration, with maturities as specified in the Resolution of April 30, 1926. Any attempt to do so is void*ab initio* and remains void. The designated defect in the bonds under consideration, which is in the nature of a jurisdictional defect, is not waived by an affected tax payer by his failure to object to the attempted validation of the bonds or by his failure to appeal from the order of validation. Under the circumstances hereinabove stated, equity may grant relief by injunction against the issuance of such bonds, notwithstanding the failure of the complaining and affected tax payer to object in the validation proceeding.

The validation proceeding on which appellees rely is a creature of the Legislature. The provisions of Sec. 3299,*supra,* and other applicable statutes, necessarily have reference to matters and rights which the Legislature could lawfully prescribe, limit, regulate or dispense with in the first instance, and to matters which that body could lawfully cure by a subsequent validating act; that is, to requirements, a non-compliance with which would render the bonds irregular or voidable, but not void *ab initio*. See Middleton v. St. Augustine, 42 Fla. 287, 29 So. 421; 89 Am. St. Rep. 227; Givens v. Hillsborough County, 46 Fla. 502, 35 So. 88.

Any matter or thing affecting the power or authority of the several political sub-divisions mentioned in Sec. 3296, Rev. Gen. Stats. 1920, to issue bonds, or the regularity or legality of their issue, including questions of both law and fact, in so far as those matters or things could be lawfully prescribed, regulated, limited or dispensed with *Page 488 by the Legislature in the first

instance, or subsequently cured by validating Acts, may be put in repose by a decree rendered pursuant to Sec. 3296, *et seq.,* Rev. Gen. Stats. 1920. So also may constitutional rights or privileges which are designed*solely* for the protection of the property rights of the individual concerned and which he may waive, or with reference to which he may estop himself, or as to which the Legislature may lawfully limit the period of time within which they may be exercised. Such an adjudication of the several matters just referred to is forever conclusive upon the persons and political sub-divisions mentioned in Sec. 3296, *et seq.,* and all such persons and bodies are thereafter forever barred from again raising those questions with respect to the bonds as to which the adjudication was made. In other words, any defect or irregularity which may be waived or to which an estoppel may apply, and which does not render the proceeding a nullity and therefore void *ab initio* and incapable of subsequent legislative ratification or validation, may be adjudicated in the validation proceeding under the statute, and if such defects or irregularities are not raised in that proceeding they are forever and conclusively settled with respect to the bonds therein involved. But if, as is the case here, the resolution upon which the proposed bonds are based is a nullity because it purports to prescribe maturities for the bonds under consideration contrary to the express command of the Constitution, the bonds to be issued pursuant thereto are not merely irregular or voidable (and therefore susceptible of ratification or validation), but such bonds are void *ab initio* and are therefore incapable of legislative validation. An affected tax payer, who is otherwise entitled so to do, but who did not intervene and object to such bonds in a statutory validation proceeding, is not thereby barred from subsequently asserting against the issuance of such bonds the mandatory and continuing command of *Page 489 the Constitution prohibiting the issuance thereof. For the reasons stated, the decree rendered in the statutory validation proceeding, purporting to validate such void bonds, is no defense to a subsequent suit in equity seeking to enjoin the issuance thereof on the ground

that the bonds are about to be issued in violation of constitutional mandate, even though the complainant tax payer might have intervened as an actual party and raised the objection in the statutory validation proceeding but did not do so.

The decree appealed from is reversed, and the cause is remanded for further proceedings consistent with this opinion.

ELLIS, C. J., AND WHITFIELD, TERRELL, BROWN AND BUFORD, J. J., concur.