

The Legal News.

VOL. VII. SEPTEMBER 27, 1884. No. 39.

GOVERNMENT BONDS. — PREMIUM PAYABLE ON CHANCE.

A question of some interest was decided recently by the New York Court of Appeals in the case of *Kohn v. Koehler*. The question was whether Austrian Government bonds, on which there was a premium payable upon chance, could be considered a lottery. The action was brought under a rather peculiar provision of the Revised Statutes (2 R. S., 6 Ed. 923), which declares that "any person who shall purchase any share, interest, ticket, certificate of any share or interest, or part of a ticket, or any paper or instrument purporting to be a ticket, or share, or interest in any ticket, or purporting to be a certificate of any share or interest in any ticket, or in any portion of any illegal lottery, may sue for and recover double the sum of money, and double the value of any goods or things in action which he may have paid or delivered in consideration of such purchase, with double costs of suit." The bond in question provided for the payment of the sum of one hundred gulden by the Austrian government, in accordance with the conditions indorsed on the back of the same, together with one fifth part of any such sum as may be allotted to the prize number of the bond, which sum must amount to at least one hundred and twenty gulden, with interest as provided. Under the rules and regulations indorsed on the bond, relating to the drawing and redemption of the bonds, of which the one in question constituted a part, provision was made for the drawing of the bonds by a division into series, and the drawing of a certain number of series tickets to be deposited in a wheel to await the drawing of the prize numbers. At a time named a drawing was to be had from the series numbers, and provision was also made for the drawing of the prize numbers deposited in another and separate wheel, and the last named drawing

designated the numbers which were entitled to prizes, which prizes varied from six hundred gulden to 300,000 gulden. Under the terms of the loan for which the bonds were issued, the holder was entitled to receive his principal and interest and a premium of twenty per cent., and what was termed a prize, if by the drawing provided for he became entitled to the same. The bonds referred to were issued by the Austrian government for the purpose of obtaining a loan of money, and the holders or owners received the same upon payment of the amount of principal therein named. The evident object of the government in issuing the bonds was to obtain money for its own use and benefit.

The Court said: "According to the true interpretation of the instrument, the government, upon receiving the money, promises to pay the principal, interest and premium named, and in addition any sum which may be drawn by the holder of the bond, in accordance with the rules and regulations indorsed upon the same. This additional sum depends upon a contingency which is to be decided by lot or chance. Independent of this the amount and the terms are fixed by the conditions of the bond. The substance of the transaction relates to a loan of money to the government and the provision made for its payment. This is the main object and purpose for which authority was given to issue the bonds, and they were disposed of evidently, having this in view. The provision by which, upon a certain contingency, the holder of the bond might receive an additional sum, was, no doubt, an inducement held out for the purpose of obtaining money on the same, but it did not constitute the main feature and the substance of the transaction between the government and the purchaser of the bond. It was a mere appendage and an incident to its main purpose, by means of which the holder might by chance receive a larger sum than the principal, interest and premium which the bond itself provided for."

The Court, upon these facts, was of opinion that in loaning money on these bonds the holder runs no risk of loss, and he took the chance which might arise in case it should