requirement (The Mayor, &c. *v.* Colegate, 12 N. Y. 146 ; People *v.* Hills, 35 N. Y. 449, 452 ; Matter of New York, &c. Bridge, 72 N. Y. 527 ; Matter of Application of Department of Public Parks, 86 N. Y. 439 ; People *v.* Whitlock, 92 N. Y. 191 ; Matter of Knaust, 101 N. Y. 188 ; Cooley, Constitutional Limitations, 141). Here the only subject suggested by the title is the transportation of passengers and property through pneumatic tubes, by atmospheric pressure, and everything appropriate and germane to that subject could be provided for in the act. But a person reading the title alone would have no clue whatever to the great railway scheme actually authorized by the act."

If, however, a local act contains a subject which *is* properly expressed in its title it is valid as to that subject although it is invalid as to a subject *not* expressed. Van Antwerp, *In re*, 56 N. Y. 261, 267 (1874); s. p. McGee's Appeal, 114 Pa. St. 470, 478 (1886) ; Dewhurst *v.* Allegheny City, 95 Pa. St. 437 ; Cooley, Const. Lim. 148.

CHAPTER IV.

PUBLIC AND PRIVATE CORPORATIONS DISTINGUISHED. — LEGISLATIVE AUTHORITY AND ITS LIMITATIONS.

§ 52 (29). **Public and Private.** — A *fundamental division* of corporations, heretofore adverted to, is into *public* and *private*.[1] The

[1] *Ante*, chap. ii. secs. 19–27. In Mills *v.* Williams, 11 Ired. (N. C.) Law, 558, (1854). *Pearson*, J., commenting on the common division of corporations, says : "The purpose in making all corporations is the accomplishment of some *public good*. Hence, the division into public and private has a tendency to confuse and lead to error in investigation ; for, unless the public are to be benefited, it is no more lawful to confer 'exclusive rights and privileges' upon an artificial body than upon a private citizen. The substantial distinction is this : Some corporations are created by the *mere will* of the legislature, there being no other *party interested or concerned*. To this body a portion of the power of the legislature is delegated to be exercised for the public good, and it is subject at all times to be modified, changed, or annulled. Other corporations are the result of *contract*. The legislature is not the only party interested ; for, although it has a public purpose to be accomplished, it chooses to do it by the instrumentality of a *second party*. These two make a contract. The expectation of benefit to the public is the moving consideration on one side ; that of expected remuneration for the outlay is the consideration on the other. *It is a contract*, and, therefore, cannot be modified, changed, or annulled without the consent of both parties. Counties are an instance of the former, railroad and turnpike companies of the latter class of corporations." This recognizes the substantial difference between the two classes of corporations, and is, in effect, a criticism upon the names by which they are distinguished.

According to the view of the Supreme Court of California, corporations should be divided into three classes, to wit : Public municipal corporations, the object of which is to promote the public interest ; corporations technically private, but of a *quasi* public character, having in view some public enterprise in which the public interests are involved, such as railroad, turnpike, and canal companies ; and corporations strictly private. Miner's Ditch Co. *v.* Zellerbach, 37 Cal. 543 (1869). The opinion of *Sawyer*, C. J., in this case, is able and instructive. The author prefers the ordinary division of corporations into public (which includes municipal) and private. The Civil Code of California thus defines public and private corporations (sec. 284) : "Corporations are either public or private. Public corporations are formed or organized for the government of a portion of the State ; all other corporations are private." Construing this section, it was held in Dean *v.* Davis, 51 Cal. 406, 410, that a levee district formed under an act of the legislature for reclamation purposes was a public corporation. *Crockett*, J., says : "It is true, perhaps, that it was not formed or organized for the government of a portion of the State, in the broadest sense of the term ; nevertheless it exercises certain governmental functions within the district. To constitute a public corporation, it is not essential that it shall exercise all the functions of government within the prescribed district." s. p., see, also, People *v.* Reclamation District, 53 Cal. 346 ; Hoke *v.* Perdue, 62 Cal. 545. See Foster *v.* Fowler, 60 Pa. St. 27 (1868), in which a company created to supply a city with water was

importance of this distinction cannot be too much emphasized, since upon it are based the legal principles which so broadly distinguish the two classes of corporations. With private corporations the present work has no other concern than to point out by way of illustration wherein they differ from those which are public. Both classes are alike created by the legislature, and in the same way, — by special charter or under general incorporation acts.

§ 53. **"Private" defined; Dartmouth College Case.** — *Private corporations* are created for private, as distinguished from purely public purposes, and they are not, in contemplation of law, public, because it may have been supposed by the legislature that their establishment would promote, either directly or consequentially, the public interest. They cannot be compelled to accept a charter or incorporating act.[1] The *assent of the corporation* is necessary to make the incorporating statute operative; but when assented to, the legislative grant is irrevocable, and it cannot, without the consent of the corporation, be impaired or destroyed by any subsequent act of legislation, unless the right to do so was reserved at the time. The celebrated *Dartmouth College Case*,[2] by its construction of the Federal Constitution, incorporated, wisely or otherwise, into American jurisprudence the principle which has been attended with such important practical consequences, namely, that privileges and franchises granted by legislative act to a private corporation, when accepted, constitute a *contract* within the meaning of the clause of the Constitution which secures inviolability of contracts by ordaining that no State shall pass any law impairing their obligation; and hence a law materially altering the charter of such a corporation is unconstitutional, unless the power to alter it was reserved, either generally or specially, when the grant was made.

held to be a public, as distinguished from a private corporation. Unless there is some special constitutional restriction, the legislature of a State may regulate the compensation of grain elevators and public warehouses, and fix a maximum rate of charges. Munn *v.* People, 69 Ill. 80 (1873). Affirmed in the Supreme Court of U. S. Munn *v.* People, 94 U. S. 313 (1876). The same principle, as respects the legislative right to regulate the charges for railway transportation services, was asserted and applied by the Supreme Court of the United States in what is popularly known as the "granger" cases. Chicago, B., & Q. R. R. Co. *v.* Iowa, 94 U. S. 155; Pike *v.* Chicago & N. W. R. R. Co., 94 U. S. 164; Lawrence *v.* Chicago & N. W. R. Co., 94 U. S. 164; Chicago, M., & St. P. R. Co. *v.* Ackley, 94 U. S. 179; Winona & St. P. R. Co. *v.* Blake, 94 U. S. 181; Southern Minn. R. R. Co. *v.* Coleman, 94 U. S. 181; Stone *v.* Wisconsin, 94 U. S. 181. The limitations upon this general right remain to be yet fully determined. An enactment exercising this right might be of such a nature as to deprive the corporation of its property without due process of law.

[1] *Ante*, sec. 44.

[2] Dartmouth College *v.* Woodward, 4 Wheat. 518. All attempts to overthrow this judgment have failed In the great case of the People *v.* O'Brien, Receiver, arising out of the acts of the legislature of New York in 1886, repealing the charter of the *Broadway Surface Railway Company*, and dissolving that corporation, decided by the Court of Appeals of New York (111 N. Y. 1, 1888), *Ruger*, C. J., speaking of the Dartmouth College Case, says: "Although it has sometimes been criticised, it has been uniformly acquiesced in by the courts of the several States as the law of the land, and may be regarded as too firmly settled to admit of question or dispute." *Infra*, sec. 68 *a*; *post*, sec. 112.

§ 54 (30). **Public Corporations defined.** — *Public including municipal corporations* are called into being at the pleasure of the State, and while the State may, and in the case of municipal corporations usually does, it need not, obtain the consent of the people of the locality to be affected. The *charter or incorporating act* of a municipal corporation *is in no sense a contract between the State and the corporation*, although, as we shall presently see, vested rights in favor of third persons, if not indeed in favor of the corporation or rather the community which is incorporated, may arise under it. Public corporations within the meaning of this rule are such as are established for public purposes exclusively, — that is, for purposes connected with the administration of civil or of local government, — and corporations are public only when, in the language of Chief-Justice Marshall, "*the whole interests* and franchises are the exclusive property and domain of the government itself," such as *quasi* corporations (so called), counties and towns or cities upon which are conferred the powers of local administration. Subject to constitutional limitations presently to be noticed, the power of the legislature over such corporations is supreme and transcendent: it may, where there is no constitutional inhibition, erect, change, divide, and even abolish them, at pleasure, as it deems the public good to require.[1]

[1] Dartmouth College *v.* Woodward, 4 Wheat. 518 (1819); Allen *v.* McKean, 1 Sumner, 276 (1833) (the Bowdoin College Case elaborately considered by *Story*, J.); see reference to this case, 2 Story's Life and Letters, 150; Patterson *v.* Society, &c., 4 Zabr. (24 N. J. L.) 385; Cheany *v.* Hooser, 9 B. Mon. 330; Berlin *v.* Gorham, 34 N. H. 266; Meriwether *v.* Garrett (repeal of charter of city of Memphis), 102 U. S. 472, 511, (1880), citing text; Sinton *v.* Carter Co., 23 Fed. Rep. 535; People *v.* Morris, 13 Wend. 325 (1835). In this case the defendant insisted that the rights and privileges conferred upon the village of Ogdensburg by the act incorporating it were *vested rights*, and could not be impaired by subsequent legislation. But, said *Nelson*, J., with his usual clearness, "It is an unsound and even absurd proposition that political power conferred by the legislature can become a vested right as *against the government* in any individual or body of men." s. p. Penobscot Boom Corporation *v.* Lawson, 16 Me. 224; Yarmouth *v.* North Yarmouth, 34 Me. 411 (1852); Story, Com. Const., secs. 1385, 1388; North Yarmouth *v.* Skillings, 45 Me. 133 (1858); Girard *v.* Philadelphia, 7 Wall. 1 (1868); United States *v.* Railroad Co., 17 Wall. 322; Philadelphia *v.* Fox, 64 Pa. St. 169; Mobile *v.* Watson, 116 U. S. 289 (1885); *ante*, sec. 9; Jersey City *v.* Railroad Co.,

§ 55. **Form of Grant does not affect Extent of Power.** — The extent of the legislative control over public or municipal corporations is not

20 N. J. Eq. 360 ; Rundle *v.* Del. &c. Canal Co., 1 Wall. Jr. 275, s. c. 14 How. 80 ; Tinsman *v.* Railroad Co., 2 Dutch. (N. J.) 148 ; State *v.* Brannin, 3 Zabr. (23 N. J. L.) 485 ; State *v.* Fuller, 5 Vroom (34 N. J. L.) 227 ; Patterson *v.* Society, &c., 4 Zabr. (24 N.J.L.) 385; *ante*, sec. 44; State *v.* Jennings, 27 Ark. 419 (1872); Clinton *v.* Railroad Co., 24 Iowa, 455 ; San Francisco *v.* Canavan, 42 Cal. 541 ; Demarest *v.* New York, 74 N. Y. 161, s. c. below, 11 Hun, 19 ; Cornell *v.* People, 107 Ill. 372 ; Lutz *v.* Crawfordsville, 109 Ind. 466 ; Wood *v.* Town of Oxford, 97 N. C. 227 ; David *v.* Portland Water Comm'rs, 14 Oreg. 98 ; Portland & W. V. R. R. Co. *v.* Portland, 14 Oreg. 188 ; *In re* Malone's Estate, 21 S. C. 435 ; Morris *v.* State, 62 Tex. 728. "A *municipal corporation*, in which is vested some portion of the administration of the government, may be changed at the will of the legislature. Such is a public corporation, used for public purposes." *Per McLean*, J., in State Bank *v.* Knoop, 16 How. U. S. 369, 380 (1853). "Public or municipal corporations are established for the local government of towns or particular districts. The special powers conferred upon them *are not vested rights as against the State*, but, being wholly political, exist only during the will of the general legislature ; otherwise, there would be numberless petty governments existing within the State and forming part of it, but independent of the control of the sovereign power. Such powers may at any time be repealed or abrogated by the legislature, either by a general law operating upon the whole State, or by a special act altering the powers of the corporation." Sloan *v.* State (implied modification of charter as to vending liquor by subsequent general law), 8 Blackf. (Ind.) 361 (1847), *per Smith*, J. Approving People *v.* Morris, 13 Wend. 325 ; Armstrong *v.* Comm. (as to removal of county seat), 4 Blackf. (Ind.) 208 (1836) ; *post*, secs. 62, 183.

In the case of the United States *v.* The Baltimore & Ohio Railroad Company, decided by the United States Supreme Court, 17 Wall. 322 (1872), in which it was held that the *general government could not tax the income or property of the city of Baltimore* under the Internal Revenue Act (*post*, sec. 775), the court discusses and examines the nature of municipal corporations and the relation they sustain to the State, of which they are treated as arms or agencies. The court says, "A municipal corporation like the city of Baltimore is a representative not only of the State, but is a portion of its governmental power. It is one of its creatures, made for a specific purpose, to exercise within a limited sphere the powers of the State. The State may withdraw these local powers of government at pleasure, and may, through its legislature or other appointed channels, govern the local territory as it governs the State at large. It may enlarge or contract its powers or destroy its existence. As a portion of the State, in the exercise of a limited portion of the powers of the State, its revenues, like those of the State, are not subject to taxation." *Post*, secs. 100, 773, 775.

As to extent of LEGISLATIVE CONTROL, *and the distinction between* PUBLIC *and* PRIVATE *corporations in this respect*, see *infra*, secs. 66, 68 *a*, 72–74 *a*, and cases ; Cooley, Taxation (2d ed.), 688. See, also, People *v.* Wren (division of a county), 4 Scam. (Ill.) 273 ; Martin *v.* Dix, 52 Miss. 53 (1876) ; People *v.* Detroit, 28 Mich. 228 (1873) ; s. c. 15 Am. Rep. 202 ; New Orleans, &c. Co. *v.* New Orleans, 26 La. An. 517 ; Coles *v.* Madison County, Breese (Ill.), 120 ; Laramie County *v.* Albany County, 92 U. S. 307 (1875) ; C. & A. R. R. Co. *v.* Adler, 56 Ill. 344 ; State *v.* Brannin, 3 Zabr. (23 N. J. L.) 485 ; Rader *v.* Road Dist., 7 Vroom (36 N. J. L.), 273 ; Bush *v.* Shipman, 4 Scam. (5 Ill.) 190 ; Holliday *v.* People, 5 Gilm. (10 Ill.) 216 ; Richland County *v.* Lawrence County, 12 Ill. 8 ; Trustees, &c. *v.* Tatman, 13 Ill. 30 ; Gutzweller *v.* People, 14 Ill. 142 ; Sangamon County *v.* Springfield, 63 Ill. 66 (1872) ; State *v.* Mayor, R. M. Charlt. (Ga.) 250 ; State, &c. *v.* St. Louis County Court, 34 Mo. 546 ; Purdy *v.* People, 4 Hill (N. Y.), 385 ; Morey *v.* Newfane, 8 Barb. 645 ; Lloyd *v.*

impaired by reason of the fact that the charter is granted in the *same act that creates a private corporation*, whose rights cannot be changed without its consent.[1] Where, in incorporating a gas company, the legislature reserved the power to alter, modify, or repeal the charter, it is competent for it, by subsequent legislation, to subject the company to supervision and control, and to confer upon the municipal corporation in which the works of the company are erected the power to regulate the price of gas, and ordinances duly passed in pursuance of such power are binding upon the company.[2]

§ 56 (31). **Differences between Public and Private Corporations illustrated.** — Some of the leading *differences between public and private*

Mayor, &c. of New York, 5 N. Y. (1 Seld.) 369 ; Lowber *v.* Same, 7 Abb. Pr. R. 248 ; Green *v.* Same, 5 Abb. Pr. R. 503 ; Aurora *v.* West, 9 Ind. 74 ; Plymouth *v.* Jackson, 15 Pa. St. 44 ; Louisville *v.* Commonwealth, 1 Duvall (Ky.), 295 ; Murphy *v.* Louisville, 9 Bush (Ky.), 189 (1872) ; O'Hara *v.* Portland, 3 Oreg. 525 ; Gray *v.* Brooklyn, 10 Abb. (N. Y.) Pr. Rep. N. S. 186 ; State *v.* Hundelhausen, 26 Wis. 432 (1870) ; Tinsman *v.* Railroad Company, 2 Dutch. (N. J.) 148 ; Marietta *v.* Fearing, 4 Ohio, 427 ; Richmond *v.* Richmond, &c. Railroad Co., 21 Gratt. (Va.) 604 (1872); State *v.* Mayor, &c., 24 Ala. 701 ; Governor *v.* McEwen, 5 Humph. (Tenn.) 241 ; Grogan *v.* San Francisco, 18 Cal. 590 ; Darlington *v.* Mayor, &c. of New York, 31 N. Y. 164 ; Savings Fund Society *v.* Philadelphia, 31 Pa. St. 175, 185 ; Philadelphia *v.* Field, 58 Pa. St. 320 ; *infra*, sec. 80 ; Erie *v.* Canal Company, 59 Pa. St. 174 ; Dunsmore's Appeal, 52 Pa. St. 374 ; Blanding *v.* Burr, 13 Cal. 343 (1859) ; People *v.* Hill, 7 Cal. 97 (1857) ; Nichol *v.* Mayor, &c., 9 Humph. 252 ; Creighton *v.* San Francisco, 42 Cal. 446 (1871) ; Lucas *v.* Tippecanoe Co., 44 Ind. 524 (1873) ; Burns *v.* Clarion County, 62 Pa. St (1869) ; Durach's Appeal, 62 Pa. St. 491; New Orleans *v.* Hoyle, 23 La. An. 740;Amite City *v.* Clements, 24 La. An. 27 (1872) ; 21 Am. Law Review 14.

This subject is discussed in an interesting manner by *Sharswood*, J., in his learned judgment, in Philadelphia *v.* Fox, 64 Pa. St. 169 (1870). The doctrine is here laid down that since the legislature cannot alienate any part of its legislative power, it cannot therefore by legislative act or contract invest any municipal corporation with an *irrevocable franchise* of government over any part of its territory. *Ib.* 181; *post*, secs. 64, 68, 72–74 *a*, 80, 567. In *Louisiana* the recall and abrogation by the legislature of powers conferred upon a municipal corporation and vesting them in another, is said to be a proper exercise of the *police power* of the State. Pickles *v.* Dry Dock Co., 38 La. An. 412. Police power is, however, a very indefinite term, and is often used to express the sum of the legislative power of the State not within the limitations of the Federal and State Constitutions. Dissolution and legislative extinction of municipal corporation, by repeal of its charter, see *post*, secs. 170, 185, 189 ; also, 21 Am. Law Review, 14.

[1] Patterson *v.* Society, &c., 4 Zabr. (24 N. J. L.) 385 (1854). See, also, Baltimore *v.* Board of Police, 15 Md. 376 (1859). Text approved. Luehrman *v.* Taxing District, 2 Lea (Tenn.), 425.

[2] State *v.* Cincinnati Gas Co., 18 Ohio St. 262 (1868). See, also, Norwich Gaslight Co. *v.* Norwich City Gas Co., 25 Conn. 19 (1856) ; State *v.* Milwaukee Gaslight Co., 29 Wis. 454 (1872). It is, we suppose, to be implied that ordinances such as those mentioned in the text shall be reasonable, and not confiscatory, in their nature and operation.

corporations are well illustrated and clearly stated in a case decided in New Jersey. In an action by a riparian proprietor against a *canal company*, for obstructing a water-course, the company insisted that it was not liable, because the work was authorized by its charter; that the acts it did were legal; that the injury complained of was consequential; that the enterprise was a public work, designed for public purposes, and that the company, in executing it, acted as the public agents of the State and, therefore, possessed the State's immunity from liability. But the court held that the company was not a public corporation. On this point Nevius, J., the organ of the court, observed: "Public corporations are political corporations, or such as are founded wholly for public purposes, and the *whole* interest in which is in the public. The fact of the public having an interest in the works or the property or the object of a corporation does not make it a public corporation. All corporations, whether public or private, are, in contemplation of law, founded upon the principle that they will promote the interest or convenience of the public. A bank is a private corporation, yet it is, in the eye of the law, designed for public benefit. A turnpike or a canal company is a private company, yet the public have an interest in the use of their works, subject to such tolls and restrictions as the charter has imposed. The interest, therefore, which the public may have in the property or in the objects of a corporation, whether direct or incidental (unless it has the whole interest), does not determine its character as a public or private corporation. In the present case, whatever may have been the objects of the corporation, whether to erect a public navigable highway or to improve the navigation of the Raritan River, or whether the public have a right to the use and enjoyment of these improvements, when made, or not, the company are essentially a private company, and are not [in the sense which will confer the State's exemption from liability] the agents of the State. Their works are not constructed by the requirement of the State, or at the expense of the State, nor does the stock belong to the State, nor is the State answerable for the lands or materials used in the construction of these works, or responsible for the debts of the company, or for injuries committed by them in the execution of their work. The State could not compel the company to construct this canal or improve the navigation of the river; it has permitted them to do so at their own request. The company might have abandoned the work whenever they saw fit; they may now abandon it without responsibility to the State. The corporation itself, the property of the corporation, the object of the corporation, are essentially private, subject only to public use, under their own

restrictions, and from which use the company are to derive the profits."[1]

§ 57 (32). **Scope of Legislative Authority.** — The adjudged cases exhibit some contrariety of opinion respecting the *scope of legislative authority over municipal corporations*, or rather respecting the question how far such corporations, viewed as legal personalities, and as

[1] *Nevius*, J., Ten Eyck *v.* Canal Co., 3 Harrison (N. J.), 200, 203 (1841); approved, Hanson *v.* Vernon, 27 Iowa, 28, 53 (1869).

In an elaborate and well-considered opinion, in which the court of appeals of Maryland held the *regents of the university of that State to be a private* corporation, though its ends were public, *Buchanan*, C. J., delivering the judgment of the court, thus *defines a public corporation*: "A PUBLIC CORPORATION is one that is created for political purposes, with political powers, to be exercised for purposes connected with the public good in the administration of civil government; an instrument of the government, subject to the control of the legislature, and its members officers of the government, for the administration or discharge of public duties, as in the cases of cities, towns, &c.; so where a bank is created by the government for its own uses, and the stock belongs exclusively to the government, it is a public corporation; and so of a hospital created and endowed by a government for general purposes of charity." Regents of University *v.* Williams, 9 Gill & Johns. (Md.) 365, 397 (1838). See, also, Norris *v.* Trustees, 7 Gill & Johns. 7. The University of the State of Nebraska is a public corporation. Regents *v.* McConnell, 5 Neb. 423 (1877); *post*, sec. 60, note.

Speaking of *public corporations*, and the relations they sustain to the State, the Supreme Court of Louisiana uses this language: "The *government of cities and towns*, like that of the police jury of parishes (counties), forms one of the subdivisions of the internal administration of the State, and is absolutely under the control of the legislature. The laws which establish and regulate municipal corporations *are not contracts, but ordinary acts of legislation*, and the powers they confer are nothing more than mandates of the sovereign power, and those laws may be repealed or altered at the will of the legislature, except so far as the repeal or change may affect the rights of third persons acquired under them." Police Jury *v.* Shreveport (repeal of corporation ferry right), 5 La. An. 661 (1850); State Bank *v.* Navigation Co. (construction of charter), 3 La. An. 294 (1848); Reynolds *v.* Baldwin, 1 La. An. 162; Haynes *v.* Municipality, 5 La. An. 760; Edgerton *v.* Municipality, 1 La. An. 435; Board *v.* Municipality, 6 La. An. 21 (1851). The same doctrine is affirmed, and the supremacy of the legislature over municipal corporations and their *funds and franchises* is asserted, in Amite City *v.* Clements, 24 La. An. 27 (1872).

In the opinion of the Supreme Court of the United States, holding that the legislature of a State might *lawfully repeal or discontinue a ferry franchise granted to a municipal corporation*, it is remarked that towns and cities, "which are public municipal and political bodies, are incorporated for public, and not private, objects. They are allowed to hold privileges or property only for public purposes. The members are not shareholders, nor joint partners in any corporate estate, which they can sell or devise to others, or which can be attached or levied on for their debts. Hence, generally, the doings between them and the legislature are in the nature of legislation rather than compact, and subject to all the legislative conditions named, and therefore to be considered as not violated by subsequent legislative changes." *Per Woodbury*, J., in East Hartford *v.* Hartford Company, 10 How. (U. S.) 511, 531 (1850); Railroad Co. *v.* Ellerman, 105 U. S. 166 (1881). See also Trustees *v.* Tatman, 13 Ill. 30; New Orleans *v.* Hoyle, 23 La. An. 740.

such representing special rights of the community that is incorporated, are within the operation or protection of the usual constitutional restraints upon legislative power. The present chapter will be devoted to a consideration of this subject. In dealing with questions of this delicate and complex nature we must beware of broad propositions, and avoid general speculations. The only wise and safe course is to keep near the shore and within the light of actual adjudications, accompanying these with such observations as seem to be required. The extent of the authority of the legislature over public corporations is strikingly illustrated by an important case decided by the court of appeals in the State of Maryland. The legislature in incorporating a railroad company made it its duty to locate its road through three towns specially named, and provided that if it failed to do so, "then and in that case said company shall forfeit $1,000,000 to the State of Maryland *for the use of Washington County*." The action was instituted for the benefit of the county to recover the $1,000,000, it being alleged that the defendant had not constructed its road in the manner required. The defendant pleaded that *since* the last continuance of the cause the legislature had passed an *act repealing* that portion of the charter of the company requiring it to build its road through those towns, and *specially remitting and releasing the forfeiture of* $1,000,000. The leading question, which was argued on either side by distinguished counsel, was, whether the provision in favor of the county was one of *contract* (the railroad company having assented to the act), and hence claimed to be inviolable by legislative interference, or whether it was one of *penalty* and therefore subject to unlimited legislative control. The court held the latter view to be the true one, and that the defendant was not liable. The court also expressed the opinion that *if it should be treated as a contract made by the State*, yet it was a contract for the benefit of one of its counties, to which the money, if collected, would belong in its political and public capacity as part of the State; and that such a contract did not come within the meaning of that provision of the national Constitution which prohibits a State from impairing the obligation of a contract, so as to prevent the legislature from releasing it at pleasure or discontinuing an action brought for its enforcement in the name of the State.[1]

[1] State *v.* Railroad Co., 12 Gill & Johns. (Md.) 399 (1842). Affirmed on error. 3 How. (U. S.) 534 (1844); C. & A. R. R. Co. *v.* Adler, 56 Ill. 344 (1870). Although the forfeiture in the case mentioned in the text was to the county (a public corporation), the same doctrine would have applied, if the forfeiture had, in such a case, been to a city or municipal corporation. *Infra*, sec. 61.

A public corporation has no *vested right to fines* directed to be paid to it, and the legislature may release them. No contract in such cases is thereby violated, for none exists. Coles *v.* Madison County, Breese (Ill.), 115; Holliday *v.* People, 5 Gilm. (10 Ill.) 216; Conner *v.* Bent, 1 Mo. 235; Rankin *v.* Beaird, Breese (Ill.), 123; *post*, sec. 62. Effect of executive *pardon on fines* going to county. Holliday *v.* People, 5 Gilm. (10 Ill.) 216.

§ 58 (33). **Offices and Officers; Municipal Officers defined; Mode of Appointment.** — Questions have arisen *under special Constitutional provisions* respecting the authority of the legislature over *municipal offices and officers*. And here it is important to bear in mind the before mentioned distinction between *State* officers — that is, officers whose duties concern the State at large, or the general public although exercised within defined territorial limits — and *municipal* officers, whose functions relate exclusively to local concerns of the particular municipality. The administration of justice, the preservation of the public peace, and the like, although confided to local agencies, are essentially matters of public concern; while the enforcement of municipal by-laws proper, the establishment of gas-works, of water-works, the construction of sewers, and the like, are matters which pertain to the municipality as distinguished from the State at large.[1] The Constitution of Michigan enjoined upon the legislature to "provide for the incorporation and organization of cities and villages," gave it authority to confer upon them such powers of a local legislative and administrative character as it should deem proper, and contained the further provision that "*judicial officers of cities and villages shall be elected, and all other* [municipal] *officers shall be elected or appointed, at such time and in such manner as the legislature may direct*"; and it was held by the Supreme Court of the State in a cause that underwent great consideration, and in which the judges delivered separate opinions, that while the legislature was left free to appoint officers not municipal, — such, for example, as a board of police commissioners in and for a city, — yet that it was restrained by the above mentioned provisions, especially by the one last quoted, from itself directly appointing municipal officers whose duties and

[1] People *v.* Hurlbut, 24 Mich. 44 (1871); s. c. 9 Am. Rep. 108. The distinction mentioned in the text is there accurately drawn, and clearly stated and illustrated in the admirable opinion of *Campbell*, C. J. It is approved and applied in Chicago *v.* Wright, 69 Ill. 326 (1873); People *v.* Draper, 15 N. Y. 543, *Denio*, J.; *Re* Woolsey, 95 N. Y. 135; Astor *v.* New York, 62 N. Y. 567. The text is cited and applied in Britton *v.* Steber, 62 Mo. 370 (1876). See and compare People *v.* Lynch, 51 Cal. 15 (1875); s. c. 15 Am. Rep. 677; Schumacher *v.* Toberman, 56 Cal. 508. Opinion of *McKinstry*, J., and of *Cooley*, J., in People *v.* Detroit, 28 Mich. 228; s. c. 15 Am. Rep. 202. Text approved. Burch *v.* Hardwick, 30 Gratt. 24; U. S. *v.* Memphis, 97 U. S. 284. *Post*, secs. 72, 74 *a*; People *v.* Curley, 5 Col. 412; State *v.* Hunter, 38 Kan. 578 (metropolitan police act giving *the city council power to appoint a board of police commissioners* held constitutional); *infra*, sec. 60; Hathaway *v.* New Baltimore, 48 Mich. 251; State *v.* George, 23 Fla. 585 (1887); *ante*, secs. 19, 22, 28. See chapter on Corporate Officers, *post*.