ever, is generally recognized, and it may be invoked as the basis of property rights in favor of the municipality which are not wholly withdrawn from the protection that our Constitutions extend to property.[1]

§ 68 (40). **Same subject.** — It is, perhaps, at present, impossible to define with precision what *limitations exist upon the power of the legislature* over municipal corporations, as ordinarily constituted. It is practicable only to refer to the leading cases upon the subject, and attempt to extract the principles upon which they rest.

It is decided that a grant by the legislature of the State to a town of the *right to establish a ferry is not in the nature of a contract;* hence the grant is repealable, and the corporation may constitutionally be deprived of the franchise.[2] So the powers conferred by the legislature upon a municipality *in respect of wharves and wharfage* may be revoked by it at pleasure if it does not touch property acquired by the municipality under the sanction of the legislature.[3] An act conferring upon a municipal corporation a *public trust*, and

the State, all their powers and functions are public. He affirms that the legislature may compel a municipal corporation to submit to arbitration claims as to which private corporations and natural persons would be entitled by the Constitution to a trial by jury. The opposite view is nowhere more ably presented than by *Campbell*, C. J., in The People *v.* Hurlbut, 24 Mich. 44 (1871); s. c. 9 Am. Rep. 103, and by *Cooley*, J., in People *v.* Detroit, 28 Mich. 228 (1873); s. c. 15 Am. Rep. 202; Gray *v.* Brooklyn, 10 Abb. Pr. Rep. N. S. 186; *post*. chap. xxiii. See as to jury, Dunsmore's Appeal, 52 Pa. St. 374. Consult on this subject Plimpton *v.* Somerset, 33 Vt. 283 (1860). See also chapters on Municipal Courts, Property, and Ordinances, *post*.

[1] See *ante*, sec. 3 *a*; *post*, secs. 68 and note 68 *a*, 69, as to the *rationale* and grounds of the distinction.

[2] East Hartford *v.* Hartford Bridge Co., 10 How. 511 (1850); s. c. 16 Conn. 149; 17 Conn. 79; Trustees *v.* Tatman, 13 Ill. 30; Police Jury *v.* Shreveport, 5 La. An. 661 (1850); Darlington *v.* Mayor, 31 N. Y. 164, 202, 203, *per Denio*, C. J. *Post*, secs. 114–116.

[3] Railroad Co. *v.* Ellerman, 105 U. S. 166 (1881). "Whatever powers," says the Supreme Court of the United States, by *Matthews*, J., in Railroad Co. *v.* Ellerman, just cited (p. 172), "the municipal body [of New Orleans] rightfully enjoys over the subject [*of wharves and wharfage*] is derived from the legislature. They are merely administrative, and may be revoked at any time, *not touching, of course, any property of the city actually acquired in the course of administration.* The sole ground of the right of the city to collect wharfage at all is that it is a reasonable compensation, which it is allowed by law to charge for the actual use of structures provided at its expense for the convenience of vessels engaged in the navigation of the river. And while it may be true, as was decided by the Supreme Court of Louisiana, in Ellerman *v.* McMains (30 La. An. pt. 1, 190), that the city cannot lawfully be required to permit the use of its wharves, without compensation, on the ground that they are private property, it is equally true, as decided by the same court in City of New Orleans *v.* Wolmot (31 La. An. 65), that the city cannot forbid any water-craft from using the banks of the navigable waters of the State for the purposes of navigation and commerce, and cannot compel them to pay to it wharfage except for the use of wharves of which it is the proprietor." *Post*, chap. vi. secs. 103–113.

the *title to land* as ancillary to its execution, is not a contract, but may be repealed at the will of the legislature.[1] But suppose the legislature had granted in fee to the corporation a tract of land within its limits, is such a grant, or is an ordinary grant of land to the corporation from others, a contract *as respects the State*, and protected by the Constitution from legislative invasion, the same as if the grant had been made to, or the property acquired by, an individual or private corporation? The question thus stated has never arisen directly for adjudication in the Supreme Court of the United States; but, in the celebrated Dartmouth College Case, two of the judges expressed the opinion that the legislative control over public and municipal corporations was not so transcendent and absolute as to extend to an arbitrary divestiture of its private property and the destruction of rights of a private nature. On the other hand, it is the opinion of a distinguished and able judge in New York, in a case already mentioned, that the authority of the legislature over the powers, rights, and property of municipal and public corporations, is, as respects the corporations, quite without limit.[2] That property acquired and owned by a municipal corporation by legislative consent is not subject to an unlimited power of the legislature over it, is consonant with natural justice. The need of having property and of property rights is one of the main reasons why municipal corporations are created. This is strongly expressed by Savigny in respect of municipal corporations in ancient Rome.[3] If a municipal corporation, as representing a distinct community, be regarded as a *legal person*, the legislature in effect says to it, "You may at your own expense acquire property;" and if it acts on such

[1] People *v.* Vanderbilt, 26 N. Y. 287 (1863); *post*, sec. 114. Where an act incorporating a city donated lands included therein for the erection of certain public buildings, and the residue to be applied to education, and the charter was afterwards repealed, it was held that *until the trust had been executed* it was competent for the legislature to change or abolish it, and that the repeal of the charter extinguished the trusts, they being public, unexecuted, and conditional. Bass *v.* Fontleroy, 11 Tex. 698–708 (1854). Where an act of the legislature, instead of granting certain moneys received by the State for the purposes of internal improvements to certain counties absolutely, simply appropriated it *to be drawn* by such counties and expended by them in the improvement of roads, &c., it was held that before its expenditure by the counties the legislature had entire control over the fund, and might resume or change the purposes for which it was originally designed to be expended, or provide for the payment by an old county, which had received, but not expended, its proportion of such fund, to a new county erected out of the old county, of an equitable share of the fund. Richland County *v.* Lawrence County, 12 Ill. 1 (1850), distinguished from Hampshire *v.* Franklin, 16 Mass. 76. *Post*, chap. viii.

[2] *Denio*, C. J., in Darlington *v.* New York, 31 N. Y. 164 (1865). See *post*, sec. 68 *a*.

[3] Savigny, Jural Relations (translated by Rattigan). sec. 85. "*Property Capacity is the essential quality of a Juristical Person*," *i. e.*, a corporation. *Ib.* secs. 86, 87.

permission, the courts may, perhaps, fairly deduce a contract that the legislature, while it may regulate or change the uses of such property, will not deprive the corporation of it. Accordingly, the weight of opinion seems to be in favor of the doctrine that there may be, in such corporations, rights under contracts and grants which are beyond destruction by the legislature, though not beyond legitimate legislative authority and control;[1] but in the present state of

[1] In Richland County *v.* Lawrence County, 12 Ill. 1 (1850), while the plenary power of the legislature over the public, civil, or political rights of public corporations was asserted and declared, still it was admitted by the very able and cautious judge who delivered the opinion, that "the State may make a contract with, or a grant to, a public municipal corporation which it could not subsequently resume; but in such case the corporation is to be regarded as a private company." *Per Trumbull*, J. Sangamon Co. *v.* Springfield, 63 Ill. 66 (1872). See West Sav. Fund Society *v.* Philadelphia, 31 Pa. St. 175; *Ib.* 185.

"But while the legislative power (to enlarge, restrain, or even destroy municipal corporations, as the public interest may require) may be exercised over public and municipal corporations, it has as uniformly been held *that towns, and other public corporations, may have private rights and interests vested in them under their charter; and as to those rights, they are to be regarded and protected the same as if they were the rights and interests of individuals or of private corporations;* and grants of property in trust for other than corporate and municipal use (that is, as we understand, for private, as distinguished from public, purposes) are no more the subject of legislative control than are the private and vested rights of individuals.' *Per Isham*, J., *arguendo*, in Montpelier *v.* East Montpelier, 29 Vt. (3 Wms.) 12, 19 (1856); s. c. 27 Vt. 704.

Legislative grants of property to private, and it seems, also, to public and municipal corporations, cannot be repealed so as to divest the rights of the grantees. Town of Pawlet *v.* Clark, 9 Cranch (U. S.), 292, 336 (1815), *per Story*, J., *obiter;* Terret *v.* Taylor, *Ib.* 43, 52. In this last case, Mr. Justice *Story* remarks, *arguendo:* "In respect, also, to *public* corporations, which exist only for public purposes, such as counties, towns, cities, &c., the legislature may, under proper limitations, have a right to change, modify, enlarge, or restrain them, *securing, however, the property*, for the uses of those for whom and at whose expense it was originally purchased." Followed by Chancellor *Kent*, 2 Com. 305; by Mr. Justice *Washington*, Dartmouth College Case, 4 Wheat. 518, 663. In the last case, Mr. Justice *Story* said: "But it will hardly be contended, that even in respect to such [public] corporations, the legislative power is so transcendent that it may, at its will, *take away the private property of the corporation*, or change the uses of its private funds acquired under the public faith." 4 Wheat. 518, 694, *obiter*. And such is Mr. Justice *Cooley's* view in his valuable treatise, Constitutional Limitations, 238. He reiterates it in his learned opinion in People *v.* Hurlbut, 24 Mich. 44; s. c. 6 Am. Law Rev. 376 (1871); s. c. 9 Am. Rep. 103, and also in his elaborate judgment in the important case of The People *v.* Detroit, 28 Mich. 228 (1873); s. c. 15 Am. Rep. 202; Detroit *v.* Detroit & Howell P. R. Co., 43 Mich. 140. In Grogan *v.* San Francisco, 18 Cal. 590, Mr. Chief-Justice *Field*, delivering the opinion of the Supreme Court of California, takes the ground that the real estate or private property of a municipal corporation is protected by the clause in the national Constitution securing the inviolability of contracts; that all legislative authority over it must be exercised in subordination to this guaranty; and that it is subject to legislative control to the same extent, but no greater extent, than all other property in the State. But in Darlington *v.* Mayor, &c. of New York, 31 N. Y. 164, 193, 205, Mr. Chief-Justice *Denio* observes: "Let

the decisions the point cannot fairly be said to be settled. It has however been adjudged that the rights of the *city of New York to*

us suppose the city to be the owner of a parcel of land not adapted to any municipal use, but valuable only for sale to private persons for building purposes, or the like, no one, I think, can doubt but what it would be competent for the legislature to direct it to be sold, and the proceeds devoted to some municipal or other public purpose, within the city, as a courthouse, a hospital, or the like. . . . It is unnecessary to say whether the legislative jurisdiction would extend to diverting the city property to other public use than such as concerns the city and its inhabitants." And he considers the expression of Chancellor *Kent* (2 Com. 305) and of Mr. Justice *Story*, that where a municipal corporation is empowered to have and to hold private property, such property is invested with the security of other private rights, to mean only that it possesses such rights against wrong-doers, and not that it is exempt from legislative control. 31 N. Y. 164, 196.

Let us consider this interesting subject a moment longer. The city of New York is the owner of valuable real property in fee made by ancient grants, from which it derives large revenues. No one denies that the legislature may regulate or direct the uses of this property, provided it is not diverted from the municipality or appropriated to *extra*-municipal purposes. But could the legislature require it to be sold and the proceeds given to the city of Albany, or covered into the State treasury? The injustice of such an act is so striking that it suggests that it *must* be beyond the legislative power, even if there are no special limitations in the Constitution. The text (sec. 68) states a ground on which the denial of such a power in the legislature can be rested. A chartered municipality is certainly a distinct legal personality; and it is a familiar principle that property acquired by a corporation under its franchises is invested with all the attributes of property, although the franchises of such corporation may be absolutely subject to legislative control. Mr. Justice *Field*, *supra*, and *Ruger*, C. J., in People *v.* O'Brien, 111 N. Y. 1 (1888), express the opinion that the private property of municipalities and of corporations is protected by the *contract clause* of the Federal Constitution. Since the opinion of Mr. Justice *Field* was given, the Fourteenth Amendment has been adopted. It provides that no person shall be deprived of property without due process of law, and the property rights of private corporations are held by the Supreme Court of the United States to be within the Amendment. A compact body of people, such, for example, as the city of New York, have needs not common to the body of the State at large; hence, their incorporation with a distinct capacity to acquire and hold property for the use and benefit of this distinct body of people. It is their property. No reason suggests itself to us why their ownership, as against a total diversion of use, is not protected by the Fourteenth Amendment. See further, *infra*, secs. 68 *a*, 72, 73.

In two cases arising out of the *Tweed frauds in New York*, the conclusion was reached that, as between the State and the municipal corporation, the funds of the corporation owned and held for the public uses of the corporation are distinctively and exclusively the property of the corporation; and the opinion was expressed *arguendo* that such funds were invested with the security of other private property, subject to the plenary power of the legislature, as declared in Darlington *v.* Mayor, &c. *supra*, to direct their appropriation to any use or purpose for the benefit of the municipality or its inhabitants. People *v.* Ingersoll, 58 N. Y. 1 (1874); People *v.* Fields, 58 N. Y. 491 (1874). The exact point, however, which was adjudged in these cases is that, unless expressly given by statute, an action could not be maintained in the name of the State by the attorney-general, to recover a judgment for moneys of the county and city of New York, fraudulently taken by the defendants, as such right of action was exclusively in the municipality, which was the owner of moneys illegally appropriated. *Post*, chap. xxii.

real estate which it owns in fee simple absolute, under grants made to it in its ancient charters, which grants were confirmed by the Constitution of the State, are as indestructible by legislative act as are the like property rights of citizens; and, applying this principle, it was held, that the legislature had no authority to pass an act ordering the demolition of a reservoir, part of the water system of New York, built by the city at the expense of its citizens, upon property which it thus owned in fee simple and upon the demolition of such reservoir further enacting that the lands covered by it, together with other lands adjoining the same owned in like manner by the city, should be converted into, and maintained as one of the public parks of the city, except upon making compensation to the city therefor.[1]

[1] Webb *v.* Mayor, &c. of New York, 64 How. Pr. Rep. 10 (Supreme Court, special term, 1882). In giving the judgment of the court, *Macomber*, J., after observing that the land in question was granted to the city in fee simple by the Dongan charter in 1686, and was also substantially embraced in the Montgomerie charter of 1730, which was confirmed by the colonial legislature in 1732, and by the Constitutions of New York of 1777, 1821, and 1846, says: "The lands in question, therefore, are owned by the city in fee simple absolute. [Citing Furman *v.* New York, 5 Sandf. (S. C.) 16; s. c. 10 N. Y. 567.] If, therefore, the legislature has undertaken by its acts to destroy the property of this corporation, or to deprive the city of its use, without just compensation, it has violated a fundamental law of the State. Chancellor *Kent* (*City Charter in Kent's Notes*), in commenting upon the provisions of the ancient charters of the city, says: 'It may not be amiss to state here, once for all, that it is an acknowledged and settled principle that no vested right of property, whether it belongs to private individuals or be in the shape of a corporate franchise, can ever be lawfully taken away without some default or forfeiture, to be ascertained by a fair trial and pronounced by judicial decree. The English statute of *Magna Charta* establishes as a great principle the sanctity of rights and privileges then existing or thereafter to be lawfully procured; and that principle was intended to be of general and perpetual application. It provided that the city of London, and all other cities, should have all their liberties and free customs; and that no freeman should be disseized of his freehold or liberties, or free customs, but by lawful judgment of his peers or by the law of the land. Corporate franchises in this country rest on a basis which ought to be at least as solid as *Magna Charta*, for they are founded on grants which are contracts, and "no State," says the Constitution of the United States, "can pass any law impairing the obligation of contracts."'

"I perceive," continues *Macomber*, J., "no difference between the tenure of property thus held by the city and the proprietary rights of natural persons or private corporations. This privilege, however, is peculiar in this State to the city of New York. [Not meaning by this to decide that property owned in fee simple absolute by other cities is not equally protected by the Constitution.]

"Nor is this property, with other real estate owned by the city, held in trust for any person; nor is it stamped with any mere political trust of which the city may be deprived, and thus its claim to the right to the possession of the property destroyed. The title to the land rests somewhere, and, as has been shown above, so far as the records extend, no one claims it except the city itself.

"It seems to me that the weight of authority is to the effect that the property which New York holds in its proprietary or private character, though originally derived from the power claiming the ultimate title, and which concerns the private advantage of the corporation, as a distinct

§ 68 *a*. **Same subject. Effect of Repeal or Dissolution.** — Where *the Constitution or laws have reserved to the legislature* absolute and unrestricted power to repeal the charters of private corporations and to dissolve them at will, the legislative supremacy over their existence would seem to be as complete as it is over that of municipal corporations; and by analogy the limitations on the legislative power over *the property and contract rights or other vested rights* of private corporations *throw light upon like questions* as respects municipal corporations. As to private corporations it can, we think, safely be affirmed that while the legislature may, under and pursuant to such reserved power, annul and dissolve them at pleasure, it is not within its competency, under the Federal Constitution as amended, or under like provisions in the Constitutions of the States, to impair or affect the property or property rights of the dissolved corporation, but only its *right to exist*, and such other rights as are *directly and necessarily dependent* on the continued existence of the corporation. The rights of mortgagees, of creditors generally, and rights arising under valid contracts with the corporation, survive the repeal and dissolution.[1] And the same doctrine, doubtless, applies

legal personality, is stamped with so many of the rights and powers of natural persons or private corporations as that the city cannot be deprived of this reservoir without due process of law and without just compensation. It admits of no doubt that the legislature may change, modify, enlarge, or restrain the powers of a corporation which it has created. But whenever this is done, and a municipal corporation is relieved of the privilege and duty of maintaining a jurisdiction over the property and property rights, care has invariably been taken to restore to the original owner or proprietor the rights which the municipal corporation were for a time permitted to exercise. Terret *v.* Taylor, 9 Cranch, 52; 2 Kent, Commentaries, 257; Dartmouth College Case, 4 Wheat. 694; People *v.* Detroit, 28 Mich. 228; Bailey *v.* Mayor, &c. of New York, 3 Hill, 531; People *v.* Fields, 58 N. Y. 591; People *v.* Ingersoll, Id. 1; Maxmillian *v.* New York, 62 N. Y. 160."

[1] People *v.* O'Brien, Receiver (Broadway Railway Case), 111 N. Y. 1 (1888); Mumma *v.* Potomac Co., 8 Pet. 285; Fletcher *v.* Peck, 6 Cranch, 135; Sinking Fund Cases (arising under reserved power to amend or repeal Pacific Railway acts), 99 U. S. 700 (1878); Greenwood *v.* Freight Co., 105 U. S. 13 (1881); Detroit *v.* Howell Plank Road Co., 43 Mich. 140, 147.

Broadway Surface Railway Case: While the legislature of New York, under the power reserved in the Constitution "to alter or repeal," from time to time, laws under which corporations are formed, and under a general reserved power by statute that "all corporations shall be subject to alteration, suspension, and repeal in the discretion of the legislature," may annul or repeal the charter of a corporation or dissolve it; yet it cannot, by virtue of such an act, or any act, impair or affect the property or property rights of the corporation. *The extent and limits of legislative power over corporations* and their rights and the rights of their mortgagees, and of persons having contracts with the dissolved corporations, underwent the most thorough and deliberate consideration of the Court of Appeals of New York in Broadway Surface Railway Case. People *v.* O'Brien, Receiver, *et al.*, 111 N. Y. 1 (1888). In that case the Broadway Surface Railway Company was, in 1884, duly incorporated. It acquired from the municipal authorities the right to lay down

to property rights acquired by virtue of valid municipal grants;[1] and it has also been declared in respect of the property rights of municipalities, though as to this, the doctrine remains, perhaps, to be fully settled, defined, and its limitations ascertained by actual judicial judgments.[2] It is agreed by all the authorities that under the

tracks and to run cars over Broadway from the Battery to Fourteenth street. It was authorized by statute to mortgage its property and franchises, and also to make contracts with connecting railroad companies for the use of their tracks. It executed mortgages on its property and franchises to secure negotiable bonds, which were sold in the market. Afterwards it appeared to the legislature probable, if not certain, that the corporation acquired the right to occupy the streets by means of bribery of a majority of the board of aldermen; and this was the motive, doubtless, that led the legislature, in 1886, to *repeal* the charter of the Broadway Company, *to dissolve the corporation*, and to provide for winding up its affairs and disposing of and distributing its property. The opinion of the court, delivered by Ch.-Judge *Ruger*, discusses the interesting questions involved with learning and marked ability. The court held that the franchise of the corporation, under its charter, and the grants from the municipal authorities to lay down tracks and operate its railroad, *was a property right* which survived the dissolution of the corporation; so were the rights of the corporation under its contracts with connecting railroads, and also the rights of the mortgagees to the continued use of the street in connection with the railroad, under the municipal consent to the use thereof for railway purposes. The special provisions of the repealing act as to winding up the affairs of the dissolved corporation and disposing of and distributing its property, were held to be unconstitutional.

[1] R. R. Co. *v.* Delamore, 114 U. S. 501; Langdon *v.* Mayor, &c., 93 N. Y. 129; People *v.* O'Brien, *supra*, and cases cited. Concerning rights acquired under municipal grants to others, *Ruger*, C. J., in The People *v.* O'Brien, *supra*, speaking of the grant by the corporation of New York City to the Broadway Surface Railway Company to use the streets of New York for its railway, says: "Grants similar in all material respects to the one in question have heretofore been before the courts of this State for construction, and it has been quite uniformly held that they are grants in fee vesting the grantee with an interest in the street in perpetuity to the extent necessary for the purposes of a street railroad. People *v.* Sturtevant, 9 N. Y. 263; Davis *v.* The Mayor, &c., 14 N. Y. 506; Milhau *v.* Sharp, 27 N. Y. 611; Mayor *v.* Second Ave. R. R. Co., 32 N. Y. 261; Sixth Ave. R. R. Co. *v.* Kerr, 72 N. Y. 330. Other cases are also reported in the books, but it is deemed unnecessary to accumulate authorities on this point. . . . We are therefore of the opinion that the Broadway Surface Railroad Company took an estate in perpetuity in Broadway through its grant from the city under the authority of the Constitution and the act of the legislature. It is also well settled by authority in this State that such a right constitutes property within the usual and common signification of that word. Sixth Ave. R. R. Co. *v.* Kerr, 72 N. Y. 330; People *v.* Sturtevant, 9 N. Y. 263. . . . It is, however, earnestly contended for the State that such a franchise is a mere license or privilege enjoyable during the life of the grantee only, and revocable at the will of the State. We believe this proposition to be not only repugnant to justice and reason, but contrary to the uniform course of authority in this country. The laws of this State have made such interests taxable, inheritable, alienable, subject to levy and sale under execution, to condemnation under the exercise of the right of eminent domain, and invested them with the attributes of property generally."

[2] Mayor, &c. *v.* Second Ave. R. R. Co., 32 N. Y. 261. In this case *Brown*, J., said: "The rights of municipal corporations to property in lands and its usual incidents, and to create ferries and railroad franchises, are quite distinct and separate

power to repeal the charters of private corporations the legislature cannot take away property acquired under the operation of the charter;[1] and as to municipal corporations the only question is whether the legislature can deprive *them*, or rather, perhaps, their inhabitants, of their property. It is believed by the author, for the reasons suggested in this chapter,[2] that while the legislature has full

from their duties as legislatures, having authority to pass ordinances for the control and government of persons and interests within the city limits. The latter are powers held in trust, as all legislative powers are, to be used and exercised for the benefit and welfare of the whole community, while the former are property, in the ordinary sense, to be acquired and conveyed in the same manner as natural persons acquire and transfer property." The same learned judge said, in Brooklyn Cent. R. R. Co. *v.* Brooklyn City R. R. Co., 32 Barb. 364: "The grant to the City Railroad Company and its acceptance of the conditions annexed, with the duties and obligations and large expenditures resulting therefrom, would seem, therefore, to invest the company with the right of property in the franchise, of which it cannot be deprived without its consent or against its will."

[1] See cases cited in note 1 to this section. In Detroit *v.* Howell Plank Road Co., 43 Mich. 140, 147, *Cooley*, J., said: "It is immaterial in what way the property was lawfully acquired, whether by labor in the ordinary vocations of life, by gift or descent, *or by making profitable use of a franchise granted by the State;* it is enough that it has become private property, and it is then protected by the 'law of the land.'"

Speaking of the reserved power to "amend or repeal" the charter of the Union Pacific Company, *Waite*, C. J., in the Sinking Fund Cases, 99 U. S. 700 (1878), delivering the opinion of the court, said: "All agree that it cannot be used to take away property already acquired *under the operation of the charter*, or to deprive the corporation of the fruits, actually reduced to possession, of contracts lawfully made."

In same case (p. 73), *Strong*, J., defines property. In The People *v.* O'Brien, *supra*, *Ruger*, C. J., said: "It is also to be observed that in none of the provisions for repeal in this State is there anything contained which purports to confer power to take away or destroy property or annul contracts, and the contention that the property of a dissolved corporation is forfeited, rests wholly upon what is claimed to be the necessary consequence of the extinction of corporate life. We do not think the dissolution of a corporation works any such effect. It would not naturally seem to have any other operation upon its contracts or property rights than the death of a natural person upon his. Mumma *v.* Potomac Co., 8 Pet. 285. The power to repeal the charter of a corporation cannot, upon any legal principle, include the power to repeal what is in its nature irrepealable, or to undo what has been lawfully done under power lawfully conferred. Butler *v.* Palmer, 1 Hill, 335."

A legislative grant of an *exclusive right to supply gas to a municipality* and to its inhabitants, through pipes and mains laid in the public streets, and upon condition of the performance of the service by the grantee, is, after acceptance and performance by the grantee, a contract protected by the Constitution of the United States against subsequent State legislation which impairs it. The legislature, however, retains its police power, including the duty to protect the public health, morals, and safety. New Orleans Gas Company *v.* Louisiana Light Company, 115 U. S. 650 (1885); Louisville Gas Company *v.* Citizens' Gas Company, 115 U. S. 683. The same principle applied to a legislative *grant of an exclusive right to supply water to a municipality* and its inhabitants. New Orleans Water-Works Company *v.* Rivers, 115 U. S. 674 (1885).

[2] *Ante*, sec. 68; *post*, sec. 69, and note.

power of legitimate regulation and control, it cannot deprive them (that is, in essence, the *people* of the locality at whose expense it has been acquired or for whose benefit it was granted) of such property. It is in effect fastened with a trust for the incorporated municipality as long as the legislature suffers it to live, and for the benefit of the people of the locality if the corporate entity which represents their rights shall be dissolved.

§ 69 (41). **Legislative power over Contracts of Municipality.** — It is an interesting question, which has not yet arisen for judgment, whether the legislature of the State has the right, in virtue of its control over municipal corporations, to annul or interfere with *contracts between two municipalities.* This would depend perhaps upon the nature of the contracts, that is, whether they were public or corporate. If, however, a municipal corporation becomes indebted, the *rights of the creditor based upon the obligation of the contract* cannot, it is clear, be impaired by any subsequent legislative enactment.[1] Thus, where an act of the legislature was passed to provide

[1] Von Hoffman *v.* Quincy, 4 Wall. 535 (1866); approved in Wolff *v.* New Orleans, 103 U. S. 358; Galena *v.* Amy, 5 Wall. 705; Amy *v.* Galena, 7 Fed. Rep. 163; and see Meriwether *v.* Garrett, 102 U. S. 472; Butz *v.* Muscatine, 8 Wall. 575; Lee County *v.* Rogers, 7 Wall. 185; Furman *v.* Nichol, 8 Wall. 44; Woodruff *v.* Trapnall, 10 How. 206; Bronson *v.* Kinsie, 1 How. 316; Lansing *v.* County Treasurer, 1 Dillon Cir. C. R. 522; Muscatine *v.* Railroad Co., *Ib.* 536; State *v.* Milwaukee, 25 Wis. 122; Brooklyn Park Comm'rs *v.* Armstrong, 45 N. Y. 234 (1871); Soutter *v.* Madison (act forbidding city to levy taxes to pay judgments held void), 15 Wis. 30; Western Savings Fund Society *v.* Philadelphia, 31 Pa. St. 175, 185; San Francisco *v.* Canavan, 42 Cal. 541 (1872); Goodale *v.* Fennell, 27 Ohio St. 426 (1875); s. c. 22 Am. Rep. 321. The power of taxation by a municipal corporation, and its limitation at the date of a contract, become a part of the contract, and continue to exist in favor of a creditor under such contract without regard to subsequent reduction of the limitation or restriction of the power. Morris *v.* State, 62 Tex. 728; United States *v.* Port of Mobile, 12 Fed. Rep. 768; Mobile *v.* Watson, 116 U. S. 289 (1885); United States *v.* County Court, 3 Fed. Rep. 1. Where a contract was made by a municipal corporation while a law providing a remedy by compulsory taxation was in force, the *repeal of the law and the adoption of a new Constitution* forbidding the levy of a tax in such case, were held invalid as impairing the obligation of the contract. Sawyer *v.* Concordia, 12 Fed. Rep. 754.

Where there is a *mode prescribed* by statute *for levying taxes* to pay the principal and interest of bonds which may be issued by municipal corporations in aid of railroads, it is considered a *part of the obligation;* and any subsequent change of it by the legislature which substantially modifies that mode so as to affect rights under the contract, is void as impairing the obligation of the contract. No rule can be laid down as to what constitutes such impairment, and each case must depend upon its own circumstances. Seibert *v.* Lewis, 122 U. S. 284. A contract made with a municipal corporation upon the faith of taxes to be levied, cannot be altered by the repeal or modification of the power of the municipality to levy the taxes; such legislation is void for being an impairment of the obligation of a contract. Nelson *v.* St. Martin's Parish, 111 U. S. 716; Louisiana *v.* Pillsbury, 105 U. S. 278. *Post,* sec. 854.

But where, by the change, additional property is made taxable to pay the bonds, a levy of taxes upon both species of property may be ordered. Cape Girardeau County *v.* Hill, 118 U. S. 68. Previous to 1879 the city of New Orleans had the power to tax for general purposes to the extent of 12½ per cent. The Constitution adopted in that year reduced the limit to 10 per cent. On an application for a *mandamus* brought by a judgment creditor whose judgment was founded upon a contract entered into in 1873, the Supreme Court of that State held, that the *power of taxation as it existed at the date of the contract was read into it,* and that so far as was necessary to satisfy the contract the power of taxation had not been affected by the new Constitution; and the writ was issued directing the levy of a tax within the 12½ per cent limit to satisfy the judgment. State, *ex rel.* Marchand *v.* New Orleans, 37 La. An. 13. See, also, State, *ex rel.* Thorn *v.* New Orleans, 37 La. An. 528; State *ex rel.* Carrière *v.* New Orleans, 36 La. An. 687; State, *ex rel.* Stewart *v.* Police Jury, 34 La. An. 673. In a later case, upon a similar application, where the judgment was based upon a contract entered into in 1874, *after* the adoption of an amendment to the Constitution, providing that the city should not increase its debt under any pretext, and forbidding the drawing of warrants except against cash actually in the treasury, it was held, by the same court, that the contract was restricted as to satisfaction to the revenues of the year, and imposed no obligation upon the city to exercise in the future the power of taxation possessed by it at that time; and it was also held that the provision in the Constitution of 1879 limiting the rate of taxation to 10 per cent was not a violation of the obligation of the contract. It refused to compel the city to levy a tax in excess of that limit. State, *ex rel.* Gas Light Co. *v.* New Orleans, 37 La. An. 436.

Further, see chapter on Contracts, *post.* sec. 511 *et seq.* For effect of judicial determination of the law at the time a contract is entered into, see *post,* sec. 517.

[1] Liquidators *v.* Municipality, 6 La. An. 21 (1851). As to *sinking fund,* see Terry *v.* Bank, 18 Wis. 87; *post,* chapter on Charters. *Fraudulent transfers* of property by municipal corporations. Smith *v.* Morse, 2 Cal. 524.

for the payment of the debts of a municipal corporation, and authorizing the creation of a *sinking fund,* to be deposited and applied in a particular manner, and where creditors acting thereunder have surrendered the evidences of their debts and received new bonds, for the payment of which the fund stands pledged by the act, it is not competent — because it impairs the obligation of contracts — for a subsequent legislature, in providing for the liquidation of the corporate debts, to give a different destination to the sinking fund by changing the depository of the fund.[1]

So where the effect of an act of the legislature authorizing a city to *fund its floating debt* was, in substance, a pledge to those who surrendered their claims and received new obligations, of a portion of its revenues and property, to be applied to the payment of its obligations in a specified mode, *this, if acted on, constitutes a contract* which cannot be materially altered, either by the municipality or the legislature, without the consent of the creditors; but it was held that a subsequent act, simply changing the mode of levying