taxes, and which did not and could not affect the result or impair the security of the creditors, was not invalid.[1]

So, also, where the legislature authorized an indebted city to issue bonds to a specified amount, in payment of a like amount of its outstanding bonds, and among other provisions, plainly intended to induce creditors to make the exchange, was one prohibiting the city from thereafter issuing its bonds, "except in payment of its bonded debt," and this authority having been acted on, the arrangement accepted by the creditors, and new bonds issued, it was decided by the Supreme Court of Wisconsin that *the prohibition against the issue of further bonds* constituted, in favor of the holders of the new bonds, a contract which the legislature could not impair by a subsequent enactment authorizing the municipality to issue additional bonds for other purposes.[2]

§ 70 (42). **Same subject.** — But authority to a city to borrow money, and to tax all the property therein to pay the debt thus incurred, *does not necessarily deprive the State of the power to modify taxation* so as to exempt portions of the property, if the rights of creditors be not thereby impaired.[3] So authority given in a railroad

[1] People *v.* Bond, 10 Cal. 563 (1858). And see People *v.* Wood, 7 Cal. 579 (1857); Brooklyn Park Comm'rs *v.* Armstrong, 45 N. Y. 234 (1871).

[2] Smith *v.* Appleton, 19 Wis. 468 (1865). Text cited and approved. Mount Pleasant *v.* Beckwith, 100 U. S. 514. Extent of legislative power over *municipal indebtedness* as against the municipality, see City *v.* Lamson, 9 Wall. 477; and read, in connection therewith, Campbell *v.* Kenosha, 5 Wall. 194, in effect overruling the practical application of Foster *v.* Kenosha, 12 Wis. 616 (1860). *Further as to rights of creditors, see post*, chapters on Charters, Contracts, and Mandamus. Youngs *v.* Hall, 9 Nev. 212.

When the performance of the obligation of a public or municipal corporation has been rendered impossible by act of the law, as, for example, by a subsequent statute, the obligation is discharged, and no action against the corporation will lie thereon. This principle is well exemplified in Brown *v.* Mayor &c. of London, 9 Com. B. (N. S.) 726 (1861), respecting the liability of London on bonds payable out of tolls and duties levied on vessels navigating the Thames. In this country, however, it is to be remembered that the legislative power, as respects creditors, is restrained by the provision of the Federal Constitution that no State shall pass any act impairing the obligation of contracts.

[3] Gilman *v.* Sheboygan, 2 Black, 510 (1862); Muscatine *v.* Railroad Co., 1 Dillon C. C. 536; Seibert *v.* Lewis, 122 U. S. 284 (1886); Goodale *v.* Fennell, 27 Ohio St. 426 (1875); s. c. 22 Am. Rep. 321; holding a subsequent act restricting power of assessment inoperative against a contractor who had agreed to take his payment in assessments.

As against a municipal corporation, the legislature may, it has been decided by the Supreme Court of Missouri, *repeal its powers to levy and collect wharfage*, although the proceeds of the public wharf had been pledged by the corporation, under legislative authority, as a fund in connection with other revenues for the payment of bonds issued for money borrowed by the corporation to maintain and improve the wharf. After the issue of such bonds, which were outstanding, and after the passage of a subsequent act repealing all acts which authorized the municipality to collect wharfage, it sued the

charter to a county to take stock and issue bonds therefor, if a majority of the voters so determine, is not a contract, but a mere authority conferred upon the county in its public capacity, and may be repealed after a vote at any time before the subscription has been made,[1] or agreed to be made.[2]

§ 71 (43). **Legislative power over Public Property of Municipality.** — The legislature, as the trustee for, and the representative of, the general public, has full control over the *public property* and the *public rights* of municipal corporations. Accordingly, it may authorize a *railroad company to occupy the streets* in a city without its consent and without payment to it;[3] but it could not, probably, authorize the taking of the private property of a city by a railroad company, except for public purposes, and upon compensation being made.[4]

defendant for refusing to pay wharfage, on the ground that the repealing act was unconstitutional; but the Supreme Court, assimilating the case to that of Gilman *v.* Sheboygan, 2 Black, 510, and distinguishing it from Von Hoffman *v.* Quincy, 4 Wall. 535, held that the city could not recover. The language of the judge delivering the opinion would seem to imply that the repealing act would not be invalid as to creditors unless other funds should prove insufficient; but it should be observed that this was not a point adjudged in the case. St. Louis *v.* Shields, 52 Mo. 351 (1873).

[1] Aspinwall *v.* County of Jo Daviess, 22 How. 364 (1859). When such repeal is effectual, see People *v.* Coon, 25 Cal. 635; Union Pacific Railroad Co. *v.* Davis County, 6 Kan. 256 (1870); compare Town of Concord *v.* Portsmouth Sav. Bank, 92 U. S. 625; *infra*, chapter on Contracts. In The State *v.* Meller, 67 Mo. 604, it was held by the Supreme Court of that State that while municipal corporations cannot, as between the legislature and themselves, place their privileges on the ground of contract, yet where the State creates a municipal corporation, and through it contracts with a third person, whereby rights become vested in the latter, it is beyond the power of the State to impair the obligations of the contract when the contract to subscribe for stock is completed. C. & O. R. R. Co. *v.* Barren Co., 10 Bush (Ky.), 604 (1874); Shelby Co. *v.* Cumberland & C. R. R. Co., 8 Bush (Ky.), 299.

In California it is held that while the legislature cannot *require the creditors of a county* to surrender their evidences of indebtedness, and accept new ones different in terms from the old, it may refuse to provide funds to pay any portion of the old indebtedness, unless the creditors will accept new evidences in place of the old, and for a less sum, and that there is no constitutional objection to a law which provides a county fund, out of which the holders of county indebtedness can obtain 50 per cent of the nominal value of their demands, whenever they may choose to accept the same. People *v.* Morse, 43 Cal. 534 (1872).

[2] Town of Concord *v.* Portsmouth Sav. Bank, 92 U. S. 625. More fully on this subject, see *infra*, chapter xiv. on Contracts.

[3] *Post*, sec. 701 *et seq.*

[4] *Ante*, sec. 68, and note, sec. 68, *a*, and notes; see *post*, secs. 72, 73. Darlington *v.* Mayor, &c., 31 N. Y. 164 (1865); Reynolds *v.* Stark County, 5 Ohio, 204; 5 Ohio St. 113; Clinton *v.* Railroad Co., 24 Iowa, 455 (1868); Louisville *v.* University of Louisville, 15 B. Mon. 642 (1855); Portland & W. V. R. R. Co. *v.* Portland, 14 Oreg. 188. See further, chapter on Streets and on Dedication, *post*; People *v.* Kerr, 27 N. Y. 188; Mercer *v.* Railroad Co., 36 Pa. St. 99; Mayor,

It may *authorize corporations to make contracts*, but it is, perhaps, more doubtful how far it can compulsorily make, in the legal sense of the word, contracts for them, since the essence of a contract consists in the agreement of the parties.[1] And on this view it has been held, in Vermont, that the legislature cannot *without the consent* of a municipal corporation, appoint an agent for it, and authorize him, as such agent, to purchase property and bind the corporation to pay for it.[2] So the Supreme Court of Illinois has decided that the legislature, under peculiar provisions in the Constitution of that State, has no power to compel a city to incur a debt against its will.[3]

etc. *v.* Hopkins, 13 La. 326 ; New Orleans, &c. Railroad Co. *v.* New Orleans, 26 La. An. 517 ; *Ib.* 478 (1874) ; Reading *v.* Commonwealth, 11 Pa. St. 196 ; *post*, sec. 701 *et seq.*

[1] Cooley on Taxation (2d ed.), 688 *et seq.*, where the subject is discussed and the leading cases referred to.

[2] Atkins *v.* Randolph, 31 Vt. 226 (1858). The case was this : Plaintiff sued the town of Randolph in assumpsit for liquor sold to an "agent" appointed by the county commissioners to purchase liquors (under the act of 1852, "to prevent the traffic in intoxicating liquors"), at the expense of the town for which he was appointed. The town never gave any assent, express or implied, to this appointment ; nor did it receive any benefit from the sale of the liquors, or have any knowledge that the agent was purchasing liquors on its credit. The court held the act of 1852 unconstitutional, and that the plaintiffs could not recover. The decision was put mainly upon the ground that the legislature could not authorize a binding contract to be made creating a debt against a public corporation without its consent. *Bennett*, J., dissented, not on the ground that the corporation was bound by force of any contract, but because the act of 1852 imposed a duty upon the towns, as *municipal corporations*, to pay for the liquors, and this for *public* purposes, and to carry out a *police* regulation. Chief-Justice *Denio* criticises this case, and considers it as "standing upon no principle." Darlington *v.* Mayor, &c. of New York, 31 N. Y. 164, 205 (1865). On the other hand it is approved by *Lyon*, J., in State *v.* Tappan, 29 Wis. 664 (1872) ; s. c. 9 Am. Rep. 662, referred to *infra*, sec. 75, and note. And see Philadelphia *v.* Field, 58 Pa. St. 320 (1868). *Post*, sec. 831, note ; sec. 72 *et seq.* Hasbrouck *v.* Milwaukee, 13 Wis. 37 ; Mills *v.* Charlton, 29 Wis. 400.

[3] Cairo & St. Louis R. R. Co. *v.* City of Sparta, 77 Ill. 505 (1875) ; People *v.* Chicago (Lincoln Park Case), 51 Ill. 17 (1869) ; People *v.* Salomon (South Park Case), *Ib.* 37 ; Harard *v.* Drainage Company, *Ib.* 130. Though the reasoning of the court is general, yet the point decided — that the city could not be compelled to contract a debt against its consent — was influenced by, if it does not rest upon, a constitutional provision (art. ix. sec. 5), which was construed to restrict the legislature from granting the right of local or corporate taxation to any other than the *corporate authorities of the municipality* or district to be taxed. In *Illinois* an act authorizing *police commissioners to issue certificates of indebtedness* without its consent is unconstitutional. People *v.* Canty, 55 Ill. 33 ; *ante*, sec. 60 ; People *v.* McAdams, 82 Ill. 356 ; Park Comm'rs *v.* Tel. Co., 103 Ill. 33. Compare Darlington *v.* Mayor, &c. of New York, 31 N. Y. 164. See Dunnovan *v.* Green, 57 Ill. 63; Sinton *v.* Ashbury, 41 Cal. 525 (1871). In *California* it is held that the legislature may empower the authorities of a city to purchase an agricultural park, and to issue its bonds in payment therefor, and to levy a tax for their payment. Sonoma County Bank *v.* Fairbanks, 52 Cal. 196. *Infra*, sec. 72 *et seq.*

The general propositions in the text *as to the restrictions on legislative power over municipal corporations* will be found to be

§ 72. **Compulsory Contracts ; Detroit Park Case.** — The Supreme Court of Michigan, in a case arising under a *statute relating to a public park for the city of Detroit*, which created a Board of Park Commissioners for the city, the act naming the commissioners and investing them with power to acquire by purchase the necessary lands, at a cost not exceeding $300,000, and imperatively requiring the city council, without its assent to the appointment of the commissioners or to the purchase of the lands by them selected, to provide the money to pay therefor by the issue and sale of the bonds of the city, held that *the city could not be compelled against the will of the council, to issue its bonds ;* and the decision was placed on the ground that a park was purely a matter of *local*, as distinguished from *State*, concern, and that it was beyond legislative competency to coerce a municipal corporation to contract a debt for local purposes without its consent.[1]

sustained by the following cases : Atkins *v.* Randolph, 31 Vt. 226 (1858) ; White *v.* Fuller, 39 Vt. 193 ; Louisville *v.* The University, 15 B. Mon. 642 ; Western Savings Fund Society *v.* Philadelphia, 31 Pa. St. 175, 185 ; Montpelier *v.* East Montpelier, 29 Vt. 12 ; Poultney *v.* Wells, 1 Aik. (Vt.) 180 ; Trustees *v.* Winston, 5 Stew. & Port. (Ala.) 17 ; Norris *v.* Trustees Abingdon Academy, 7 Gill & Johns. (Md.) 7 ; Regents of University *v.* Williams, 9 Gill & Johns. 365 ; Trustees of Academy *v.* Aberdeen, 13 Sm. & M. 21 Miss. 645 ; Brunswick *v.* Litchfield, 2 Me. (2 Greenl.) 28, 32.

[1] People, *ex rel.* Park Comm'rs *v.* Common Council of Detroit (mandamus to compel the council to raise money to pay for lands for the park), 28 Mich. 228 (1873) ; s. c. 15 Am. Rep. 202. The ground upon which the judgment in the Detroit Park Case, just mentioned, rests, as appears by the opinion of the court delivered by *Cooley*, J., is that a municipal corporation like that of Detroit will be found to be in part a mere public agency of the State, and in part possessed of peculiar and local franchises and rights which appertain to it as legal personality for its *private* (as distinguished from the *public*) advantage. It is admitted that "in all matters of general concern there is no local right to act independently of the State, . . . and the State may exercise compulsory authority, and enforce the performance of local duties, either by employing local officers for the purpose, or through agents or officers of its own appointment. . . . The proposition which asserts the amplitude of legislative control over municipal corporations, when confined, as it should be, to such corporations as agencies of the State in its government, is entirely sound. They are not created exclusively for that purpose, but have other objects and purposes peculiarly local, and in which the State at large, except in conferring the power and regulating its exercise, is legally no more concerned than it is in the individual and private concerns of its several citizens. Indeed it would be easy to show that it is not from the standpoint of State interest, but from that of local interest, that the necessity of incorporating cities and villages most distinctly appears. State duties of a local nature can for the most part be very well performed through the usual township and county organizations. It is because, where an urban population is collected, many things are necessary for their comfort and protection which are not needed in the country, that the State is then called upon to confer larger powers and to make the locality a subordinate commonwealth. . . . It is a fundamental principle in this State, recognized and perpetuated by express provision of the Constitution, *that the people of every hamlet, town, and city of the State are entitled to the bene-*

§ 73. **Same subject.** — The *judgment of this able court in the Detroit Park Case,* as well as the argument of the eminent judge in the opinion by which it is supported, is in the author's judgment not only sound, but it is in accordance with the weight of judicial expression on the subject.[1] There are difficulties attending the assertion of unlimited legislative power over municipalities, and difficulties, also, in assigning limits to that power. The legislative power of the State ought to be at all times comprehensive enough and penetrating enough to enforce all duties and to redress all evils. Abuses will inevitably arise which nothing but legislative surgery can remedy. It seems to be right and just that the citizens of Detroit should not be compelled to incur a large debt for a park, which after all is a matter of luxury and ornament rather than a prime necessity. But change the instance. Suppose the city should refuse to provide a system of sewers or drainage, whereby the health of its people was injuriously affected: may it say that this does not concern the people of the State outside the city, that it is peculiarly a local matter, and therefore is beyond the power of the State to compel the city to make such a provision, and to raise the necessary taxes or make the necessary assessments to that end? On the whole, the question *whether a city may be compelled to create a debt or liability against its will* must be answered, we think, with reference

fits of local self-government. But authority in the legislature to determine what shall be the extent of the capacity in a city to acquire and hold property is not equivalent to, and does not contain within itself authority *to deprive the city of property* actually acquired by legislative permission. As to property it thus holds for its own private purposes, a city is to be regarded as a constituent in State government, and is entitled to the like protection in its property rights as any natural person who is also a constituent. *The right of the State is a right of regulation, not of appropriation.* It cannot be deprived of such property without due process of law. And when a local convenience or need is to be supplied in which the people of the State at large, or any portion thereof outside the city limits, are not concerned, the State can no more by process of taxation take from the individual citizens the money to purchase it, than they could, if it had been procured, appropriate it to the State use. . . From the very dawn of our liberties the principle most unquestionable of all has been this: that the people shall vote the taxes they are to pay, or be permitted to choose representatives for the purpose."

Supra, sec. 71 n. Callam *v.* Saginaw, 50 Mich. 7, cited *infra,* sec. 140, note. See, also, Detroit *v.* Plank Road Co., 43 Mich. 140; Mayor *v.* Park Comm'rs, 44 Mich. 602, cited *infra,* sec. 565, note. The city's ownership of *gas works* is in its local or private, as distinguished from its public character. Western Sav. Fund Soc. *v.* Philadelphia, 31 Pa. St. 183. "Provisions for local conveniences for the citizens, like water, light, public grounds for recreation, and the like, are manifestly matters which are not provided for by municipal corporations in their political or governmental capacity, but in that *quasi* private capacity in which they act for the benefit of their corporators exclusively." Cooley on Taxation (2d ed.), 688.

[1] See *supra,* sec. 68, and note; sec. 68 *a,* and notes.

not only to the constitutional provisions of the State, but to the nature of the purposes for which the debt or liability is to be incurred.

§ 74. **Same subject.** — Thus, if there is no special limitation in the Constitution, and the debt or liability is one to be incurred in the discharge of a *public or State duty,* which it is proper for the legislature to impose upon the municipality, it can constitute no objection to the validity of the Act that the debt or liability is to be created without its consent. Accordingly, in the absence of constitutional restriction, it has been decided, and the decision is doubtless correct, that it is *competent for the legislature to direct a municipal corporation to build a bridge over a navigable watercourse within its limits,* or the State may appoint agents of its own to build it, and empower them to create a loan to pay for the structure, payable by the corporation.[1] Thus also, since municipal corporations are instruments of government, created for political purposes, and subject to legislative control, and since it is one of the ordinary duties of such corporations, under legislative authority, to make and keep in repair the streets and highways and bridges connected therewith, the Court of Appeals in Maryland sustained an act mandatory in its terms, which not only empowered but *required the city of Baltimore in its corporate capacity to take charge of and maintain as a public highway a specified bridge within that city,* and enforced the duty created by the act of mandamus.[2] But the legislature cannot by an imperative

[1] Philadelphia *v.* Field, 58 Pa. St. 320 1868), approving Thomas *v.* Leland, 24 Wend. 65; Guilder *v.* Otsego, 20 Minn. 74 (1873); *supra,* sec. 54, note, and cases cited. United States *v.* B. & O. R. R. Co., 17 Wall. 322 (1872); *post,* sec. 775; Carter *v.* Bridge Proprietors, 104 Mass. 236 (1870). But the legislature would not, of course, possess such extensive powers over a private corporation. Erie *v.* Canal, 59 Pa. St. 174. Public highways and bridges are matter of general, or State, rather than of municipal concern. Cooley, Taxation (2d ed.), 682. A city street, however, while its character is chiefly public, has also a local and peculiar and *quasi*-public or corporate character; which is shown in chap. xviii. on Streets and chap. xxiii. on Actions.

[2] Pumphrey *v.* Baltimore, 47 Md. 145. A *county being justly indebted* under a contract for the erection of public buildings therein, *the legislature may require it to issue its bonds to pay such indebtedness.* Jefferson County *v.* People, 5 Neb. 136 (1876). The power of the legislature over municipal contracts and liabilities was very fully considered in The People *v.* Batchellor, 53 N. Y. 128 (1873); s. c. 13 Am. Rep. 480, and the conclusion was reached that while municipalities may be compelled by the legislature, without their consent, to construct and maintain improvements of a public character, and even enter into contracts for this purpose, they could not be compelled, without their consent or that of their taxable inhabitants, to become stockholders in a railway corporation; *and therefore a mandatory statute requiring a municipal or public corporation to subscribe for stock in a railway corporation, and issue its bonds in payment therefor, without such consent, was unconstitutional.* The opinion of

statute compel a municipality, without its consent or that of its inhabitants, to create a debt to aid in the construction of a railway.[1]

§ 74 *a*. **Same subject. Compulsory liability; City Hall building in Philadelphia.** — If the legislature has unlimited power to determine for what purposes and in what amounts indebtedness chargeable upon a municipality and payable by its inhabitants may be created *without their consent* or that of their local authorities, it is a power of such a nature as to be certain to lead to abuse and oppression. This is strikingly illustrated by the experience of the city of Philadelphia, which it is profitable to record for instruction and warning. At an early day the Supreme Court of Pennsylvania, under the lead of Chief-Justice Gibson, asserted,in a great variety of cases, a measure of legislative power almost as unlimited as that of Parliament. It came to be the accepted doctrine in that State, that municipalities held not only their existence but all of their rights

Grover, J., contains a valuable review of many of the leading decisions upon the extent of legislative control over municipalities. And the case is distinguished from The People *v.* Flagg, 46 N. Y. 401, where a mandatory act of the legislature, requiring the town of Yonkers, without its consent, to issue bonds to raise money to be expended in the construction of highways in the town, was held to be constitutional. The case of Batchellor was also distinguished, or attempted to be, from the decisions of the Supreme Court of the United States and of the State courts, to the effect that railway corporations are public, and erected for public purposes in such a sense as that the taxing power may be employed to aid in their construction, unless there is some special limitation in the Constitution of the particular State. The case of People *v.* Flagg, *supra*, was decided before the constitutional amendment of 1874, prohibiting local legislation on the subject of laying out and working highways, but permitting such power to be delegated to the local authorities by general laws. People *v.* Supervisors, 112 N. Y. 585 (1889), distinguishing People *v.* Flagg. See Town of Flatbush, *In re*, 60 N. Y. 398 (1875), cited, *ante*, sec. 63, note; Jensen *v.* Supervisors, 47 Wis. 298; *post*, sec. 831, note.

In the Brooklyn and New York Bridge Case, the court of appeals have declared that the *erection of a bridge to connect two cities may be a "city purpose,"* for which indebtedness may be incurred under the late constitutional amendment upon that subject. In deciding such a question the court said that great weight should be given to the determination of the legislature. A constitutional provision that no county, city, or town shall give money or loan its credit to any individual or corporation, or become the owner of corporate stock or bonds, is not in conflict with a statute authorizing two cities already owning stock in a company organized to build a bridge between such cities, to become the owners of the whole stock, by purchasing the stock of the private stockholders, or, in case of a failure to agree, by taking it by eminent domain. A statute authorizing the erection of a certain bridge, provided that the trustees should call on the cities who were to pay for it for the funds necessary, "provided, however, that the whole amount to be paid by both cities shall not exceed eight million dollars." *Held* that this was not an absolute limit against a greater cost, but only a direction that no more should be called for without further legislative authority. (*Church*, C. J., *Folger* and *Miller*, JJ., dissenting.) People *v.* Kelly, 5 Abb. N. Y. New Cas. 383.

[1] People *v.* Batchellor, *supra*.

at the absolute will of the legislature, which, if it chose, could govern the inhabitants of municipalities by its own appointees.[1] Acting under this view, the legislature in 1870 passed an act "To provide for the erection of all public buildings required to accommodate the courts for all the municipal purposes within the city of Philadelphia." By this act the legislature decided that the city should have new public buildings. The act selected certain citizens by name, whom it appointed commissioners for the erection of the buildings. It made this body perpetual by authorizing it to fill vacancies. It was not chosen by the inhabitants or taxpayers, or removable by them, or accountable to them. It was authorized without the consent of the municipal authorities to make contracts to construct the buildings, which the act declared should be binding at law upon the city and the contractors. It was authorized prior to December 1 of each year to make requisitions on the common councils for the amount of money required for the succeeding year; and the act made it the duty of the common councils to levy a special tax sufficient to meet the requisition, and to do all such acts as the commission might from time to time require. This commission was imposed by the legislature upon the city, and given absolute control to create debts for the purpose named, and

[1] Philadelphia *v.* Fox, 64 Pa. St. 160, 180, 181, per *Sharswood*, J., who, giving the judgment of the court, says: "A municipal corporation is merely an agency of government fully subject to the control of the legislature, who may enlarge or diminish its territorial extent, or its functions, may change or modify its internal arrangement, or destroy its very existence, with the mere breath of arbitrary discretion. . . . The sovereign may continue its [the city's] corporate existence, and yet assume or resume the appointments of all of its officers and agents into its own hands; for the power which can create and destroy can modify and change."

It may, we think, be doubted whether, upon full and mature consideration, the Constitutions of the several American States do not contain express or implied limitations upon the autocratic power of the legislature asserted in the paragraph quoted, which, however, is typical of many to be found in the judicial discussions on this subject. We are inclined to concur in the soundness of the observations quoted below, of an eminent judge and jurist, who has given much attention to this subject. In the course of an interesting chapter "on local taxation under legislative compulsion," Judge *Cooley* (Taxation, 2d ed. chap. 21. p. 678) says: As "local powers of taxation must come from the State, it might seem to follow, as a corollary, that the State could, at pleasure, withhold the grant and exercise the power itself. But in the general framework of our republican governments nothing is more distinct and unquestionable than that they recognize the existence of local self-government and contemplate its permanency. Some State Constitutions do this in express terms, others by necessary implication; and probably in no one of the States has the legislature been entrusted with the power which would enable it to abolish the local government. It has usually a large authority in determining the extent of local powers and the framework of local government; but while it may shape the local institutions, it cannot abolish them, and, without substituting others, take all authority to itself."

to require the levy of taxes for their payment. A scheme more repugnant to all notions of local self-government than that which was forced upon the city and committed to this legislative oligarchy cannot well be conceived. "They projected (according to a learned judge of that State) structures at the corner of Broad and Market streets upon a scale of magnificence better suited for the capital of an empire than the municipal buildings of a debt-burdened city."[1]

Acts vesting the ordinary municipal functions in commissions appointed by the legislature would seem in this State not to have been unfrequent. Public discontent was exhibited, and at length found its expression in the amended Constitution of 1874, which prevents for the future the creation of such commissions, by ordaining "That the General Assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise, or interfere with any municipal improvement, money, property, or effects, whether held in trust or otherwise; or to levy taxes, or to perform any municipal function whatever."[2] This Constitution also provided that "no debt shall be contracted or liability incurred by any municipal commission except in pursuance of appropriations previously made by the municipal government."[3] These provisions failed however to give relief in respect to the buildings in question, for the construction of which the commission had, prior to 1874, entered into contracts. The provision first quoted was held to be prospective only, and not to apply to special commissions existing before the adoption of the amended Constitution. And as to the second provision above quoted, it was held that while it would prevent the commission thereafter from entering into any contract until an appropriation had been made by the municipal government, it did not repeal the obligation imposed by the above mentioned Act of 1870 upon the common councils to raise the amount required by the commissioners and to levy the necessary taxes. Accordingly, the Supreme Court, on the relation of the commission, decided that it was entitled to a peremptory mandamus to compel the common councils (they having refused to do so) to levy a special tax to meet a requisition of the commission for $1,500,000, this being the amount found by the commission

[1] Per *Paxson*, J., in Perkins *v.* Slack, 86 Pa. St. 283 (1878). Speaking of this building, Judge *Hare* says (1 Am. Const. Law, 630): "For nearly twenty years all the money that could be spared from immediate and pressing needs has been compulsorily expended upon an enormous pile which surpasses the town halls and cathedrals of the Middle Ages in extent, if not in grandeur."

[2] Art. 3, sec. 20, Constitution of 1874.

[3] Art. 15, sec. 2, Constitution of 1874.

to be necessary for the succeeding years for the city hall building before mentioned.[1]

§ 75 (44). **Mandatory Statutes to pay Claims not legally binding on the Municipality.** — The fact that a claim against a municipal or public corporation is not such an one as the law recognizes as of *legal obligation* has often been decided, by courts of the highest respectability and learning, to form no constitutional objection to the validity of a law imposing a tax and directing its payment;[2]

[1] Perkins *v.* Slack, 86 Pa. St. 270 (1878). It is confessedly difficult in many cases to define the line of demarcation between public or State powers and duties which municipalties may be compelled to perform as State agencies, and those of a private or *quasi* private or corporate nature which pertain to municipalities as the organized representatives of compact communities for their own special local benefit and convenience. General usage and practice must largely guide the inquiry. A county may doubtless be compelled to build a court-house if no special constitutional restriction stands in the way. But the building of a city hall of the character of the one in Philadelphia would seem rather to belong to the category of local or municipal, as distinguished from State or public objects, which, therefore, cannot, or, if it can, ought not to be forced by central legislative dictation upon a reluctant community, which alone must bear the burden. In *Michigan* the State cannot compel, but it may authorize, an incorporated city to erect a court-house for the county in which the city is situated. Callam *v.* Saginaw, 50 Mich. 7.

[2] Guilford *v.* Supervisors, &c., 13 N. Y. (3 Kern.) 143 (1855). This case holds the following propositions: 1. That the legislature has power to levy a tax upon the taxable property of a town, and appropriate the same to the payment of a claim made by an individual against the town. 2. That it is not a valid objection to the exercise of such power that the claim, to satisfy which the tax is levied, is not recoverable by action against the town. 3. That it does not alter the case that the claim has been rejected by the voters of the town, when submitted to them at a town meeting, under an act of the legislature authorizing such submission, and declaring that their decision should be final and conclusive.

This case has been approved, *arguendo*, by the Supreme Court of the United States. The United States *v.* Baltimore & Ohio Railroad Co., 17 Wall. 322 (1872); New Orleans *v.* Clark, 95 U. S. 654 (1877). *Infra*, sec. 76 *a*.

On the other hand, the same case has been disapproved by the Supreme Court of Wisconsin, in The State *v.* Tappan, 29 Wis. 664 (1872); s. c. 9 Am. Rep. 622, and an act of the legislature of Wisconsin, similar in its nature and principles to that involved in Guilford *v.* Supervisors, *supra*, was held unconstitutional. The opinion of *Lyon*, J., evinces great care in its preparation; but it has failed to satisfy us that, in the absence of special constitutional restraints, the extent of the legislative power of taxation depends upon the *consent* of the municipality or the people therein, or that the special act before the court exceeded the rightful power of the legislature. The principle has been reaffirmed, in Massachusetts, that the discretionary power of the legislature in the distribution of public burdens embraces the power to authorize an assessment on one district for part of the expense of repairing a portion of a bridge in another. Carter *v.* Bridge Proprietors, 104 Mass. 236 (1870); *post*, sec. 737. See Mr. Sedgwick's opinion of this legislation, Const. and St. Law, 313, 314. The principle of Guilford *v.* Supervisors was applied in Brewster *v.* Syracuse, 19 N. Y. 116 (1859), where it was decided by all of the judges of the Court of Appeals that the legislature has the power to authorize the levy of a tax for the purpose of paying to one who has constructed a municipal improvement (a street sewer)