but the validity of legislation of this character, if it interferes with what has been called the *private contracts* of such corporations, must be sustained on the ground that such contracts, so far as the corporations are concerned, are under the absolute control of the legislature, and not within the protection of the contract clause of the national Constitution. The cases on this subject, when carefully examined, seem to the author to go no further, probably, than to assert the doctrine that it is competent for the legislature to compel municipal corporations to recognize and pay debts or claims not binding in strict law, and which, for technical reasons, could not be enforced in equity, but which, nevertheless, are just and equitable in their character, and involve a moral obligation.[1] To this extent

an addition to the contract price, which the corporation was forbidden to pay by its charter. The court did not consider that there was any contract in the case, and sustained the legislation on the ground that it was warranted by the taxing power, which, in that State, was not restrained, thus leaving it in the discretion of the legislature to recognize and direct the payment of claims founded in equity and justice, or in gratitude or charity. People *v.* Mayor, &c. of Brooklyn, 4 Comst. (N. Y.) 419. And see Thomas *v.* Leland, 24 Wend. 65 (1840); People *v.* Dayton, 55 N. Y. 367 (1874); *infra*, sec. 76 *a*; Shelby Co. *v.* Railroad Co., 5 Bush (Ky.), 225; Philadelphia *v.* Field, 58 Pa. St. 320 (1868). This seems to be carrying the doctrine of the control of the legislature over public corporations to its extreme limit. See Mr. Justice *Cooley's* views, Const. Lim. 380, 491, notes. Taxation (2d ed.), 685, 698. The Supreme Court of California has followed and approved Guilford *v.* Supervisors. Blanding *v.* Burr, 13 Cal. 343 (1859); North Mo. R. R. Co. *v.* Maguire, 49 Mo. 490, 500, (1872). And more recently in New York the Court of Appeals, while not questioning the *judgment* in Guilford *v.* Supervisors, &c., criticised and limited some of the *dicta* in that case as to the extent of the legislative power. Weismer *v.* Village of Douglass, 64 N. Y. 91; s. c. 21 Am. Rep. 586. See *infra*, sec. 76 *a*. Under special provisions of Michigan Constitution, see People *v.* Onandaga, 16 Mich. 254. *Where one county is under a moral obligation to reimburse another county for certain expenses, the legislature may give this a legal effect by a subsequent act.* Lycoming *v.* Union, 15 Pa. St. 166 (1850); O'Hara *v.* State, 112 N. Y. 146 (1889); Cole *v.* State, 102 N. Y. 54. *Rights of trial by jury may be denied by the legislature to municipal corporations, these being mere creatures of its policy, with such rights only as it sees proper to confer.* Borough of Dunmore's Appeal, 52 Pa. St. 374; Kelsh *v.* Dyersville, 68 Iowa, 137; but see *ante*, sec. 66, note.

[1] Blanding *v.* Burr, 13 Cal. 343 (1853); Lycoming *v.* Union, 15 Pa. St. 166; Guilford *v.* Supervisors, 13 N. Y. 144 (1855); Brewster *v.* Syracuse, 19 N. Y. 116 (1859); Thomas *v.* Leland, 24 Wend. 65 (1840); Hasbrouck *v.* Milwaukee, 21 Wis. 217 (1866); Smith *v.* Morse, 2 Cal. 524; Grogan *v.* San Francisco, 18 Cal. 590; Sinton *v.* Ashbury, 41 Cal. 525 (1871); New Orleans *v.* Clark, 95 U. S. 644 (1877); People *v.* Lynch, 51 Cal. 15 (1875); Creighton *v.* San Francisco, 42 Cal. 446 (1877); People *v.* Supervisors, 70 N. Y. 228 (1877). Text approved. Nevada *v.* Hampton, 13 Nev. 441; *infra*, sec. 76 *a*, sec. 77, note.

The legislature, in favor of a county collecting officer, who has settled and paid a claim against him, may pass an act authorizing the settlement to be opened and *equitably* adjusted, and such an act is an implied direction that the rule of law as to voluntary payments, shall not apply. Burns *v.* Clarion Co., 62 Pa. St. 422 (1869). In *California* the legislature cannot compel a city to pay a claim which it is under no obligation whatever to pay;

and with this limitation, the doctrine is unobjectionable in principle, and must be regarded as settled, although it asserts a measure of control over municipalities, in respect of their duties and liabilities, which probably does not exist as to private corporations and individuals.

§ 76. **Same subject.** — Accordingly, in a case where a municipality, after the passage of an act of the legislature which provided that towns and cities should not thereafter "have power to contract any debt without fully *providing in the ordinance creating the debt the means of paying the principal and interest*," issued bonds without such a provision as the above statute required, and used them in payment of an authorized indebtedness, the Supreme Court of the United States held that inasmuch as *the bonds represented an equitable claim against the city*, it was competent for the legislature to interfere and require the city to pay them. "The power of the legislature," says Field, J., delivering the judgment of the court, "to require the payment of a claim for which an equivalent has been received, and from the payment of which the city can only escape on technical grounds, would seem to be clear. . . . A very different question," the learned judge cautiously adds, "would be presented if an attempt were made to apply the means raised [by taxation] to the payment of claims for which no consideration had been received by the city."[1]

§ 76 *a*. **Same subject.** — A bank advanced money to commissioners for the construction of the New York City court-house. In making these advances the bank was represented by its president,

nor require a court to render judgment on proof of the amount thereof. Hoagland *v.* Sacramento, 52 Cal. 142. See *infra*, sec. 76.

[1] New Orleans *v.* Clark, 95 U. S. 644, 652 (1877). The *power of the legislature to appropriate the moneys of municipal corporations* in payment of claims ascertained by it to be equitably due to individuals, though such claims be not enforceable in the courts, depends largely, in the view of the Supreme Court of California, upon the *legislative conscience*, and will not be interfered with by the judicial department unless in exceptional cases; and the circumstance that the contract under which the plaintiff did certain work in San Francisco, expressly provided that the city should in no event be liable for any portion of the expenses thereof, *was held* not to affect or in any manner invalidate an act subsequently passed by the legislature requiring the city to pay him a debt which in good conscience it ought to pay. Creighton *v.* San Francisco, 42 Cal. 446 (1872); Sinton *v.* Ashbury, 41 Cal. 525 (1871); New Orleans *v.* Clark, 95 U. S. 644 (1877); *supra*, secs. 75, 76.

In Iowa it appears to be regarded as not within the power of the legislature to provide a means for the collection of an unconstitutional obligation against a public corporation, as where a debt had been incurred in excess of the limit fixed by the Constitution. Mosher *v.* School District, 44 Iowa, 122 (1876).

and it made the advances in good faith without notice of any conspiracy or misappropriation; but in fact the commissioners had entered into a fraudulent conspiracy to raise bills for work above the true amount and to divide the excess among themselves. Part of the money advanced went into the court-house, but the larger portion of it was fraudulently diverted by the commissioners. Three of the conspirators were directors of the bank, but were not present when any action was taken in respect of the advances by the bank. After this, the legislature passed an act directing the city to pay back to the various banks all moneys which had been advanced by them for the use of any of the departments of the city or county, which act included the advance above mentioned. This act was held to be a valid exercise of the legislative power.[1]

§ 77 (45). **Ratifying void Local Assessments.** — It has, however, been decided in Maryland, that, as *against the abutters, the legislature could not ratify an assessment for a local improvement in front of their property,* which had been adjudged to be void, and compel them to pay for the same.[2] In the case just mentioned, the legislature, in an act relating to the grading and paving of an avenue in the city of Baltimore, among other things required, as preliminary to proceedings thereunder, that the mayor and council of the city should determine the proposed work to be consistent with the public good. An application by property owners for the improvement was made to the city commissioners instead of the mayor and council, and the commissioners determined to grade the avenue, awarded the contract, and the contractor did the work at the cost of over $100,000. The abutters instituted no proceedings to stop the work; and after it was completed the city passed an ordinance ratifying the contract to grade, and all the acts of the officers of the

[1] Mayor, &c. of New York *v.* Tenth National Bank, 111 N. Y. 446 (1888). *Earl*, J., says: "The legislature may determine what moneys they may raise and expend, and what taxation for municipal purposes may be imposed; and it certainly does not exceed its constitutional authority when it compels a municipal corporation to pay a debt which has some meritorious basis to rest on"; citing Town of Guilford *v.* Supervisors; Brewster *v.* City of Syracuse; Darlington *v.* Mayor, 31 N. Y. 164; Brown *v.* Mayor, 63 N. Y. 239.

Assuming that the commissioners had no power to borrow money, and that the city was not liable for the advances made to them by the bank, this retroactive act imperatively requiring the city, without its consent, to make good to the bank the large amount which the conspirators put into their pockets and which never went into the work, seems to carry the legislative power beyond the just limits of equitable or moral obligation, which the author cannot but think is the true measure of legislative power of this character.

[2] Baltimore *v.* Horn, 26 Md. 194 (1866); compare with cases cited in secs. 75 and 79; Lennon *v.* New York, 55 N. Y. 361 (1874).

city in relation to the grading of the avenue. An assessment being made upon their property, to pay the expense of the grading, they filed a bill for an injunction and relief, and it was judicially determined that the proceedings of the city commissioners were *coram non judice* and void, and that they could not be ratified by ordinance.[1] After this judicial determination, the legislature passed an act directing the city to pay the contractors for the work done by them and accepted by the city, to borrow the money for the purpose, and levy a tax for its payment, which the city did. But at the same session, the legislature, to reimburse the city treasury, empowered the city to collect from the abutters on the avenue graded the amounts which had been assessed and ascertained by the city commissioners; and this last act was held by the court of appeals to be void, because it was an assumption of judicial power by the legislature, and, in effect, a legislative reversal of the former judgment of the court.

§ 78. **Same subject.** — In *levying a local assessment* upon the abutting property, a lot within the district declared to be benefited was omitted, after which the legislature validated the assessment, this omission and exemption being retained and preserved; and it was held by the Supreme Court of California that the validating act was unconstitutional.[2] The ground for this judgment is satisfactory; since the legislature could not prospectively have exempted the property omitted because it would have violated the constitutional requirement of uniformity,[3] it could not do this retrospectively.

§ 79 (46). **Curative Acts.** — *In general, however, the legislature may, by subsequent act, validate and confirm previous acts of the corporation otherwise invalid.* If the act could have been lawfully performed or done under precedent legislative authority, the legislature may subsequently ratify it and give it effect.[4] Merely because

[1] Baltimore *v.* Porter, 18 Md. 284 (1861); see *infra*, sec. 814. In Brown *v.* Mayor, &c. of New York, 63 N. Y. 239 (1876), a legislative ratification of an *ultra vires* contract for street improvements was sustained. Duanesburg *v.* Jenkins, 57 N. Y. 177 (1874). *Infra*, secs. 79, 544. O'Hara *v.* State, 112 N. Y. 146 (1889).

[2] People *v.* Lynch, 51 Cal. 15 (1875); s. c. 21 Am. Rep. 676. Followed in Schumacher *v.* Toberman, 56 Cal. 508, where *McKinstry*, J., said: "The legislature cannot legalize a void assessment, nor by direct act make an assessment within an incorporated city." *Infra*, secs. 79, 544.

[3] *Post*, sec. 755, and cases cited in note. For construction of constitutional provision in California in respect of equality and uniformity of taxation, the opinion of *McKinstry*, J., in The People *v.* Lynch, *supra*, will repay reading.

[4] Bridgeport *v.* Railroad Co., 15 Conn. 475 (1843), in which it was held that the legislature might validate prior subscription of city to stock of railroad company. S. P. Winn *v.* Macon, 21 Ga. 275 (1857); Mattingly *v.* District of Col., 97 U. S.

such legislation, in matters not relating to crimes, is retrospective, does not make it void. If in addition to its being retrospective, it unjustly impairs or abrogates vested rights, and, without reasonable cause, imposes upon third persons new duties in respect to past transactions, it will be void because in conflict with the Constitution.[1]

687; McMillen *v.* Boyles, 6 Iowa, 304; *Ib.* 391; New Orleans *v.* Poutz, 14 La. An. 853; Bissell *v.* Jeffersonville, 24 How. 287, 295 (1860); Atchison *v.* Butcher, 3 Kan. 104 (1865); Frederick *v.* Augusta, 5 Ga. 561; Allison *v.* R. W. Co., 9 Bush (Ky.), 247 (1872); Truchelut *v.* City Council, 1 Nott & McCord (S. C.), 227; Citizens' Water Co. *v.* Bridgeport Hydraulic Co., 55 Conn. 1; Tifft *v.* Buffalo, 82 N. Y. 204; Cooley, Const. Lim. 371, 379; *post*, secs. 419, 551, 814; *contra*, under Constitution of Illinois; Marshall *v.* Silliman, 61 Ill. 218; but see *infra*, sec. 544, note. A healing statute is not unconstitutional by reason of giving validity to an act irregularly done which the legislature could have authorized to be done in the irregular way in the first instance. Lockhart *v.* Troy, 48 Ala. 579 (1872).

It is competent for the legislature, by subsequent enactment, to cure defects or omissions in the proceedings of the superintendent of streets. San Francisco *v.* Certain Real Estate, 42 Cal. 517 (1872). Where the original purpose for which the power of taxation is invoked is one of the ordinary purposes of municipal government and within the powers granted, and where there is no fraud or oppression in the creation of the debt or burden, and no inequality or injustice in the apportionment of the tax, the *legislature may by subsequent enactment cure any defect in the proceedings to collect the tax which it could in the first instance, by prior enactment, have made immaterial.* Emporia *v.* Norton, 13 Kan. 560; approved in Mason *v.* Spencer, 35 Kan. 512. (An act curing defect in mode of collecting a sewer tax held valid.) Subsequent legislative ratification of the acts of a municipal corporation, which might lawfully have been performed under precedent legislative authority, is valid and effectual. Anderson *v.* Santa Anna, 116 U. S. 364, a case from Illinois. Adhered to in Bolles *v.* Bromfield (a case from Illinois), 120 U. S. 759 (1886), although after the issue of the bonds in suit by the municipality the Supreme Court of the State of Illinois had decided against the validity of such curative legislation. Otoe County *v.* Baldwin, 111 U. S. 1; Grenada Co. *v.* Brogden, 112 U. S. 261, 262. Curative act held ineffectual by reason of original want of power in municipality to issue bonds, and of a disabling provision in the Constitution of Mississippi. Katzenberger *v.* Aberdeen, 121 U. S. 172. *But a retrospective act, to make valid a tax upon property not within the corporation when levied, was held void.* Atchison, &c. R. R. Co. *v.* Maquillon, 12 Kan. 301 (1873).

[1] Bridgeport *v.* R. R. Co., 15 Conn. 475, 497, and cases cited *per Church*, J. Laws passed *to remedy defective execution of powers of public corporations, or their officers*, are valid, though retrospective in their operation, unless they contravene some provision of the State Constitution. State *v.* Newark, 3 Dutch. (N. J.) 187 (1858); Bissell *v.* Jeffersonville, 24 How. 287, 295, where such curative acts are said to be valid when contracts are not impaired, or the rights of third persons injuriously affected. New Orleans *v.* Clark, 95 U. S. 644 (1877).

It is competent for the legislature to *validate a city ordinance* which had become null and void for want of being recorded, and to provide that the omission to record shall not impair the lien of the assessments against the lot-owners. Schenley *v.* Commonwealth, 36 Pa. St. 29 (1859). The legislature may ratify, and thereby make binding an *unauthorized municipal subscription* to the stock of an incorporated theatre company. Municipality *v.* Theatre Company, 2 Rob. (La.) 209 (1842); but, *quære*, whether, if the legislature had the power, the act in this case was properly held to be a ratification. Dan-

§ 80 (47). **Legislative Power over Property held in trust for Specific Uses.** — While it is undeniable that the legislature has full control over public corporations, and over the funds which belong to them as such, and held for strictly public purposes, yet where by authority of law such corporations *hold property or funds in trust for specific uses*, it is left in doubt by the cases how far the legislature can, unless the uses be public or charitable, interfere with or control such trust property or funds. In a case of great interest, the Supreme Court of Pennsylvania decided that it was within the power of the legislature to deprive the city of Philadelphia of the right to administer charitable trusts under the will of Mr. Girard and others, which had been granted to and accepted by it, and to confer the administration of these trusts upon a separate body called "Directors of City Trusts," appointed by the judges of the Supreme Court and other judges named in the act. It is to be remarked, however, that the legislature did not attempt to change or pervert the trusts themselves.[1] Certain it is, that without legislative authority a municipal corporation holding the legal title to property in trust cannot use the funds derived from such property for corporate purposes, or indeed for any except the trust purposes.[2]

ielly *v.* Cabaniss, 52 Ga. 211 (1874). See, further on this subject, chapter on Contracts, *post*, sec. 544. Text cited and approved. Pompton *v.* Cooper Union, 101 U. S. 196.

[1] Philadelphia *v.* Fox, 64 Pa. St. 169 (1870). Such a power has since been taken away from the legislature. Const. Pa., 1874, art. 3, sec. 20; *supra*, sec. 74 *a*; *post*, sec. 567 *et seq.*

[2] White *v.* Fuller, 39 Vt. 193; *ante*, sec. 64; Montpelier *v.* East Montpelier (contest as to trust property on division of town), 27 Vt. (1 Wms.) 704 (1854); same controversy in chancery, 29 Vt. (3 Wms.) 12. See, also, Trustees, &c. *v.* Bradbury, 2 Fairf. (Me.) 118; Poultney *v.* Wells, 1 Aik. (Vt.) 180; Plymouth *v.* Jackson, 15 Pa. 44; Harrison *v.* Bridgeton, 16 Mass. 16; Daniel *v.* Memphis, 11 Humph. (Tenn.) 582; Trustees of Academy *v.* Aberdeen, 13 Sm. & M. (21 Miss.) 645, as to which, *quære*. Aberdeen *v.* Sanderson, 8 Sm. & M. 670; Chambers *v.* St. Louis, 29 Mo. 543; Holland *v.* San Francisco, 7 Cal. 361; Girard *v.* Philadelphia, 7 Wall. 1. See, *post*, chapters on Corporate Property and Remedies against Illegal Corporate Acts.

A conveyance was made in 1873, by the proprietors of the lands, to the selectmen of North Yarmouth, of "all the flats, sedge banks, and muscle beds in said town, lying below high-water mark, . . . for the sole use and benefit of the present inhabitants, and of all such as may or shall forever inhabit or dwell in said town," &c. It was decided that this property was held by the town as a *public* corporation, subject to legislative control, *in trust* for the use of all of the inhabitants, and that upon a division of the town, it was competent for the legislature to provide that the original town should still hold such property in trust for the inhabitants of both towns. North Yarmouth *v.* Skillings, 45 Me. 133 (1858); *post*, sec. 187.

To another town in Maine, lands were granted by Massachusetts prior to the separation of Maine therefrom, for the *use of its schools*. The legislature, in 1803, on the application of the town, authorized the sale of the lands, and gave to certain designated *trustees* the right to control the funds raised by the sale of the lands. This was considered as constituting a *contract*, and it was accordingly held that

a subsequent act of the legislature, authorizing the town to choose a new set of trustees, and directing the first trustees to deliver over the trust property, was, agreeably to the principles settled in the Dartmouth College Case, unconstitutional and void. The Trustees, &c. *v.* Bradbury, 11 Me. 118 (1834); Yarmouth *v.* North Yarmouth, 34 Me. 411 (1852). In this last case the trustees of the funds were a *private* corporation, and not subject to legislative control. In North Yarmouth *v.* Skillings, 45 Me. 133 (1858), the trustees of the property or fund in question were a *public* corporation, and subject to such control. The rule as to private and public corporations is well exemplified in these two cases. See, also, Norris *v.* Abingdon Academy, 7 Gill & Johns. (Md.) 7; Bass *v.* Fontleroy, 11 Tex. 698; Louisville *v.* University of Louisville, 15 B. Mon. 642.

In The State *v.* Springfield Township, 6 Ind. (Porter) 83 (1854), it was held that a law of the State (act of 1852), so far as it diverted the proceeds of the sale of the sixteenth section (granted by act of Congress of April 19, 1816) from the use of schools in the *congressional* township where the land was situated, to the use of the school system of the State at large, was in contravention of that section of the State Constitution (sec. 7, art. viii.) which provides, that "all trust funds held by the State shall remain inviolate, and be faithfully and exclusively applied to the purpose for which the trust was created."

That the legislature *cannot in dividing a town* violate the provisions of the donor of a fund held by a municipality in specific trusts is affirmed by the Supreme Court of New Hampshire in a recent judgment. The case was this: In 1856 the town of M. received from John Boynton the sum of $10,000 as a fund for the support of its public schools, on the express condition that, *unless* the income thereof should be forever divided and applied, according to the number of scholars between the ages of five and fifteen in the several schools or districts of the town, the fund should be repaid to the donor, his executors, administrators, or assigns. In 1872, the town of G. was created by act of the legislature out of part of the territory and inhabitants of M., and it was provided that all property, real and personal, and all school and other funds belonging to the original town of M. should be divided in the proportion of seven to M. and thirteen to G. It was held that the legislature had no constitutional power to direct a division or distribution of the fund different from that prescribed by the donor; and that, therefore, no legal provision for the division of the fund in controversy having been made, the rights of the town of M. therein were unaffected by the act, and the new town of G. was not entitled to any portion of the fund or income. Greenville *v.* Mason, 53 N. H. 515 (1873); *post*, sec. 187, note.

CHAPTER V.

MUNICIPAL CHARTERS.

General Municipal Powers. — Their Nature and Construction.

§ 81 (48). **Subject outlined.** — This chapter will treat of *Municipal Charters* and the *principles upon which they are construed*, and of the general *nature of the powers* which they confer upon the corporation or upon its legislative or governing body. The subject will be considered under the following heads: —

1. Charters defined. § 82.
2. Judicially noticed. § 83.
3. Proof of Corporate Existence. § 84.
4. Repeal and Amendment of Charters. §§ 85, 86.
5. Conflict between General Laws and Special Charters. §§ 87, 88.
6. Extent of Corporate Powers, Limitations thereon, and Canons of Construction. §§ 89, 90, 91.
7. Usage as affecting Powers and their Interpretation. §§ 92, 93.
8. Discretionary Powers. §§ 94, 95.
9. Public Powers incapable of Delegation. § 96.
10. Public Powers cannot be surrendered or bargained away. § 97.
11. Imperative and Discretionary Powers. §§ 98, 99.
12. Exemption of Revenues from Judicial Seizure, and herein of Garnishment. §§ 100, 101.

§ 82 (49). **Charters defined.** — We have before seen that *in this country* municipal corporations are created by legislative act, either in the form of a special legislative charter or under general incorporating statutes.[1] A MUNICIPAL CHARTER granted *by the crown in England* is a written instrument in the form of letters-patent, with the Great Seal appended to it, addressed to all the subjects, and constituting the persons therein named and their successors a body corporate for or within the place therein specified, and prescribing the powers and duties of the corporation thereby created. But such charters are inoperative until accepted.[2] But in this country, as

[1] *Ante*, secs. 39, 41.
[2] *Ante*, secs. 32, 44. Outline of charter of the Middle Ages, *ante*, sec. 6.