principle that the exercise of municipal powers or discretion cannot be delegated *does not prevent a corporation from appointing agents* and empowering them to make contracts, or from appointing committees and investing them with duties of a ministerial or administrative character.[1]

A municipal council having authority to pave streets at the primary expense of the city, directed the making of the pavements of one or the other of specified materials, but giving to the owners of abutting lots, on whom the expense would ultimately fall, the privilege of selecting which, and reserving to the street committee the authority to select, in case the lot-owners failed, and authorized the mayor to execute a contract accordingly, which was done. It was objected by the city that this contract was invalid: (1) because the city could not delegate the power to the mayor to make it; and (2) because the mayor could not delegate to the lot-owners the power of determining the kind of materials. The Supreme Court of the United States, while admitting that "the council could not delegate all the power conferred upon it" in this respect, yet held that it could do its ministerial work by agents, and that there was here no unlawful delegation of power.[2]

§ 97 (61). **Legislative Powers cannot be surrendered or bargained away.** — Powers are conferred upon municipal corporations for public purposes; and as their legislative powers cannot, as we have just seen, be delegated, so *they cannot without legislative authority, express or implied, be bargained or bartered away.* Such corporations may make authorized contracts, but they have no power, as a party, to make contracts or pass by-laws which shall cede away, control, or embarrass their legislative or governmental powers, or which shall disable them from performing their public duties.[3] The cases cited

[1] Railroad Co. *v.* Marion Co., 36 Mo. 294; Schenley *v.* Commonwealth, 36 Pa. St. 62; Stewart *v.* Council Bluffs, 58 Iowa, 642. Where the charter gave the common council power to "ordain by-laws relating to *wharves*, and the anchoring, moving, and mooring of vessels," and "*to appoint all necessary officers* to carry the by-laws into effect," and the council passed a by-law creating the office of *superintendent of wharves*, and giving him "full power to order and regulate, whenever requested by the owner or lessee of any wharf, the mooring of vessels at such wharf," such a by-law is not void as delegating to the superintendent of wharves the making of regulations which the charter gave the council alone the power to make. Gregory *v.* Bridgeport, 41 Conn. 76 (1874). See chapters on Contracts and Corporate Meetings, *post.*

[2] Hitchcock *v.* Galveston, 96 U. S. 341 (1877). If a contract should be invalid because of the delegation of powers, it may be ratified by the council. *Ib.*

[3] Richmond Gaslight Co. *v.* Middletown (gas contract), 59 N. Y. 228 (1874); Lord *v.* Oconto, 47 Wis. 386, approving text; Matthews *v.* Alexandria, 68 Mo. 115; Bodine *v.* Trenton (boundaries of streets), 7 Vroom (36 N. J. L.) 198; State *v.* New Brunswick; 1 Vroom (30 N. J. L.), 395; Indianapolis *v.* Indianapolis Gas Co., 66 Ind. 396, approving text. Milhau *v.* Sharp, 27 N. Y. 611 (1863); Ill. &c. Co. *v.* St. Louis, 2 Dillon C. C. Rep. 70; Gale *v.* Kalamazoo (market-house contract), 23 Mich. 344 (1871); s. c. 9 Am. Rep. 80; Louisville City Railroad Co. *v.* Louisville, 8 Bush (Ky.), 415 (1871); Covington, &c. R. R. Co. *v.* Covington, 9 Bush (Ky.), 127; People's Railroad *v.* Memphis Railroad, 10 Wall. 38, 50 (1869); Presb. Church *v.* Mayor, &c. of New York, 5 Cow. 538 (1826); followed, Stuyvesant *v.* Mayor, &c. of New York, 7 Cow. 588; Sav. Fund *v.* Philadelphia, 31 Pa. St. 175; Lehigh Water Co.'s Appeal, 102 Pa. St. 515; San Francisco Gas Light Co. *v.* Dunn, 62 Cal. 580; Mayor, &c., of Albany, *In re*, 23 Wend. 277; Railroad Co. *v.* Mayor, &c., 1 Hilt. 562, 568; Martin *v.* Mayor, &c., 1 Hill (N. Y.), 545 (1841); Goszler *v.* Georgetown, 6 Wheat. 593; Sedgw. Const. and St. Law, 634; State *v.* Graves, 19 Md. 351, 373 (1862); Bryson *v.* Philadelphia, 47 Pa. St. 329; Cooley, Const. Lim. 206; Albany St., 6 Abb. Pr. R. 273; Britton *v.* Mayor, &c. of New York, 21 How. Pr. R. 251; New York *v.* Second Av., &c., Co., 32 N. Y. 261; Dingman *v.* People, 51 Ill. 277; Brimmer *v.* Boston, 102 Mass. 19 (1869); Johnson *v.* Philadelphia, 60 Pa. St. 445; State *v.* Cin. Gas Co., 18 Ohio St. 262, 295; Jackson *v.* Bowman, 39 Miss. 671 (1861); Oakland *v.* Carpentier, 13 Cal. 540 (1859), opinion of *Baldwin*, J.; Smith *v.* Morse, 2 Cal. 524; Louisville City Railway *v.* Louisville, 8 Bush (Ky.), 415; Karst *v.* St. Paul, &c. R. R. Co., 22 Minn. 118 (1875); Peru *v.* Gleason, 91 Ind. 566; Brenham *v.* Water Co., 97 Tex. 542; National Bank *v.* St. Joseph, 31 Fed. Rep. 216; *ante*, sec. 54 and note; *post*, secs. 116, 692, 716. Compare Attorney-General *v.* Mayor &c. of New York, 3 Duer, 119, 131, 147; Davis *v.* Same, 14 N. Y. (4 Kern.), 506, 532; Costar *v.* Brush, 25 Wend. 628; Brooklyn *v.* City Railroad Co., 47 N. Y. 475 (1872). *One legislature, in the enactment of laws, cannot, by contract, put it out of the power of a subsequent legislature to repeal or amend them;* cannot thus surrender a portion of its sovereign power. Debolt *v.* Ins. and Trust Co., 1 Ohio St. 564; Plank R. Co. *v.* Husted, 3 Ohio St. 578, *per Bartley*, C. J., dissenting; Matheny *v.* Golden, 5 Ohio St. 375; Mott *v.* Pa. Railroad Co., 30 Pa. St. 9 (1858). But see, in Supreme Court of the United States, Home *v.* Rouse, 8 Wall. 430, and prior cases cited, and the vigorous dissent (*Ib.* 441), which seems, were the question open, to be the sound view. Cooley, Const. Lim. 127, 280; Sedg. Const. and St. Law, 616, 633; *post*, secs. 385, 692, 716.

mark the scope and illustrate the application of this salutary principle in a great variety of circumstances, and, for the protection of the citizen, it is of the first importance that it shall be maintained by the courts in its full extent and vigor.

§ 98 (62). **Imperative and Discretionary Powers distinguished.** — It is often material to determine *whether a duty*, imposed by law or charter upon municipal corporations or public officers, *is imperative or discretionary.* This is always a question of legislative intention, and, therefore, of construction. The general tests to ascertain this intention, propounded in the cases cited, are of doubtful value. The words that a *corporation or officer "may" act* in a certain way, or that it "shall be lawful" to act in a certain way, may be imperative. On this subject some of the cases declare the doctrine that what public corporations or officers are empowered to do for others, and

that which is beneficial to them or to the public to have done, the law holds they ought to do, especially if the law specifically or adequately supplies them with the means of executing the power. The power in such cases is conferred for the benefit of others or of the public; and the *intent* of the legislature, which is the test in such cases, ordinarily seems, under such circumstances, to be to impose a positive and absolute duty. But, under other circumstances, where the act to be done does not affect third persons, and is not clearly beneficial to them or the public, and the means for its performance are not thus supplied, the words, "may" do an act, or it is "lawful" to do it, do not mean "must," but rather indicate an intent in the legislature to confer a discretionary power.[1] Each case, we repeat, must be largely decided on its own circumstances, and the legislative intent gathered from the whole act. No positive, inflexible, or stereotyped rule can be laid down.

[1] Mason *v.* Fearson (duty of city under tax law), 9 How. (U. S.) 248, 259, *per Woodbury*, J., and authorities there cited. In Hurford *v.* Omaha, 4 Neb. 336, 350 (1876), the subject is fully examined, and certain tests to ascertain the legislative intention are stated. Veazie *v.* China, 50 Me. 526. It is the settled doctrine in New York, that where a public or municipal corporation or body is invested with *power to do an act which the public interests require to be done*, and the means for its complete performance are placed at its disposal, not only the execution, but the proper execution of the power, may be insisted on as a duty, though the statute conferring it be only permissive in its terms. Mayor, &c. of New York *v.* Furze, 3 Hill, 612, holding corporation liable for omitting its duty to *repair* sewers, although it would not have been liable for having omitted to construct them originally. Approved 16 N. Y. 162, *note*, *per Selden*, J.; *per Denio*, J., 9 N. Y. 168, 458; *per Allen*, J., *Ib.* 461. The same doctrine has been declared in New Jersey, State *v.* Newark, 4 Dutch. 491; Seiple *v.* Elizabeth, 3 Dutch. 407; Reed *v.* Bainbridge, 1 Southard, 351, 358. Compare Reock *v.* Newark, 4 Vroom (33 N. J. L.), 129. See, further, the chapter on Actions, *post*, chap. xxiii.

When words are imperative, and when directory, see further, Grant, Corp. 34, 35; Rex *v.* Mayor, &c. of Hastings, 5 Barn. & Ald. 692, note; Attorney-General *v.* Lock, 3 Atk. 164; Rex *v.* Mayor, &c. of Chester, 1 Maule & Sel. 101; Rex *v.* Bailiffs, &c., 1 Barn. & Cress. 86; 3 Barn. & Cress. 272; Railroad Co. *v.* Platte Co. 42 Mo. 171; Railroad Co. *v.* Buchanan Co., 39 Mo. 485; Grant *v.* Erie, 69 Pa. St. 420; s. c. 8 Am. Rep. 272; Goodrich *v.* Chicago, 20 Ill. 445, authority to city "to remove all obstructions in the harbor," held not imperative. *Ib.* Ottawa *v.* People, 48 Ill. 233; Carr *v.* North Liberties, 35 Pa. St. 324; Joliet *v.* Verley, 35 Ill. 58; Wilson *v.* Mayor, &c., 1 Denio, 595. An act that "the *city council are hereby authorized* to elect a recorder, in whom they may vest exclusive jurisdiction of all violations of their ordinances," imposes the duty to elect this officer. The language is mandatory, and not discretionary. Vason *v.* Augusta, 38 Ga. 542 (1868). The expression, in a supplemental charter, "*it shall be lawful*," construed not to enjoin an imperative duty on the corporation. Seiple *v.* Elizabeth, 3 Dutch. (N. J.) 407; Steines *v.* Franklin Co., 48 Mo. 167 (1871). *Private action* for breach of *statutory duty*, when, Heeny *v.* Sprague, 11 R. I. 456; s. c. 23 Am. Rep. 502. Rule in the English courts. Addison on Torts (4 Eng. ed.), 1054. See, further, *post*, secs. 468, 832, 836, 857, 908, 934, 949.

§ 99 (63). **Same subject.** — It is also sometimes difficult to determine whether specific duties prescribed by the charter or incorporating act *rest upon the corporation or upon the aldermen or other officers* named in their individual capacity. The question also is one of construction. The general rule is this: that where powers pertaining to the duties of a corporation are conferred upon those who officially represent the corporation, such powers, unless the contrary appears, are deemed to be conferred upon them in their corporate, not their individual character; in other words, upon the corporation itself.[1]

§ 100 (64). **Exemption of Municipal Revenues from Judicial Seizure for Debts.** — Municipal corporations are instituted by the supreme authority of a State for the public good. They exercise, by delegation from the legislature, a portion of the sovereign power. The main object of their creation is to act as administrative agencies for the State, and to provide for the police and local government of certain designated civil divisions of its territory.[2] To this end they are invested with governmental powers and charged with civil, political, and municipal duties. To enable them beneficially to exercise these powers and discharge these duties, they are clothed with the authority to raise revenues, chiefly by taxation, and subordinately by other modes, as by fines and penalties. The revenue of the public corporation is the essential means by which it is enabled to perform its appointed work. Deprived of its regular and adequate supply of revenue, such a corporation is practically destroyed, and the ends of its erection thwarted.[3] Based upon considerations of this character, it is the settled doctrine of the law that not only the public property but also the taxes and public revenues of such corporations cannot be seized under execution against them,[4] either in the treasury or when in transit to it. Judgments rendered for taxes, and the pro-

[1] Conrad *v.* Ithaca, 16 N. Y. 158, *per Selden*, J., p. 170; Hickok *v.* Plattsburg, 15 Barb. S. C. 427; Glidden *v.* Unity, 10 Fost. (30 N. H.) 104, 119; *post*, secs. 208, 236, 237, 974 *et seq.* A power conferred by statute upon *three or more persons* as commissioners, or otherwise, for a public purpose, is not extinguished by the death of one, where no provision exists for filling the vacancy, but vests in the survivors. People *v.* Palmer, 52 N. Y. 83 (1873); People *v.* Mayor, &c. of Syracuse, 63 N. Y. 291, 297 (1875), distinguishing People *v.* Nostrand, where the statute provided for filling the vacancy in the commission.

Where all are notified to attend, a majority may act. *Post*, secs. 221, note, 283; Astor *v.* New York, 62 N. Y. 567 (1875); Astor *v.* New York, 62 N. Y. 580. Presumption as to notice, *Ib.*; *post*, chap. xxiii.

[2] *Ante*, chap. ii. secs. 9, 28.

[3] Text approved. Saloy *v.* New Orleans, 33 La. An. 79.

[4] Brown *v.* Gates, Treasurer, &c., 15 W. Va. 131.

ceeds of such judgments in the hands of officers of the law, are not subject to execution unless so declared by statute. The doctrine of the inviolability of the public revenues by the creditor is maintained, although the corporation is in debt, and has no means of payment but the taxes which it is authorized to collect.[1]

§ 101 (65). **Garnishment.** — Upon similar considerations of public policy, *municipal corporations and their officers* have usually, though not uniformly, been considered *not to be subject to garnishment*, although private corporations, equally with natural persons, are liable to this process. The cases on the subject, as respects

[1] Edgerton *v.* Municipality, 1 La. An. 435 (1846), where the subject is ably discussed in the opinion of *Rost*, J. He says: "On the first view of this question there is something very repugnant to the moral sense in the idea that a municipal corporation should contract debts, and that, having no resources but the taxes which are due to it, these should not be subjected by legal process to the satisfaction of its creditors. This consideration, deduced from the principles of moral duty, has only given way to the more enlarged contemplation of the great and paramount interests of public order and the principles of government." *Ib.* 440; s. p. Municipality *v.* Hart, 6 La. An. 570 (1851). This case holds that a judgment in favor of the corporation for a fine incurred for a violation of a municipal ordinance is exempt from execution; but that an *ordinary debt* due the corporation (as on a bond taken for paving) is liable to be seized. But *quære.* In Edgerton *v.* Municipality, *supra*, it was decided that the public taxes and revenues of the corporation could not be seized under execution, notwithstanding the general provision of the Code of Practice of Louisiana, authorizing the seizure, under execution, of "all sums of money which may be due to the debtor in whatsoever right," — this general language being construed to refer alone to *rights of property*, and not to taxes imposed for the protection of those rights. So in The Railroad Co. *v.* Municipality, 7 La. An. 148 (1852), it was held that perpetual ground rents, created and intended by the legislature to form part of the permanent revenue of the city to enable it to exercise its municipal powers of police and local government, cannot be sold on execution against the corporation. In Police Jury *v.* Michael, 4 La. An. 84, a seizure of public buildings, &c., by a creditor was enjoined.

The public nature of municipal corporations is well illustrated by the decision of the Supreme Court of the United States, in the case of The United States *v.* The Baltimore & Ohio Railroad Co., 17 Wall. 322 (1872). The case involved the right of *Congress* to levy a tax upon the income or property of a municipal corporation, and viewing such a corporation as an arm of the State, and partaking of the State's exemption from liability to be taxed upon the means and instrumentalities employed in conducting its operations, it was held that the tax sought to be enforced under the Internal Revenue Act could not be collected. *Post*, sec. 775. The still later and notable case of Meriwether *v.* Garrett, 102 U. S. 472 (1880), noted, *infra*, chap. vii., still more distinctly illustrates the principles of the text. *Post*, sec. 169 *et seq.* See chapter on Taxation, *post.* Property owned by a city as an investment of funds merely, held liable to seizure on execution. New Orleans *v.* Insurance Co., 23 La. An. 61 (1871). In this case the court declare a distinction between it and Edgerton *v.* Municipality, *supra*, and Police Jury *v.* Michael, 4 La. An. 84; but *quære.* Underhill *v.* Calhoun, 63 Ala. 216, approving the text. *Post*, secs. 576, 850, 861, 884. The *remedy of creditors* of municipal corporations is discussed in the subsequent chapters on Contracts and Mandamus.

municipal corporations, are referred to in the note; and it will be seen, on examination, that some of them turn on the construction of particular statutes, and that the judges differ in opinion respecting the policy and expediency of subjecting, upon general principles, such corporations to the process of garnishment. The author's view, where the question is left entirely open by statute, is, that, on principle, a municipal corporation is exempt from liability of this character with respect to its revenues and the salaries of its officers, but that where it owes an ordinary debt to a third person, the mere inconvenience of having to answer as garnishee furnishes no sufficient reason for withdrawing it from the reach of the remedies which the law gives to creditors of natural persons and of private corporations.[1]

[1] The Supreme Court of *Pennsylvania* is of the opinion that, on principle, a municipal corporation or its officers are not subject to garnishment or attachment or execution, and that by the statutes of that State they are not made liable thereto. Erie *v.* Knapp, 29 Pa. St. 173 (1857); Bulkley *v.* Eckert, 3 Barr (Pa.), 368, *per Sargeant*, J.; s. p. McDougal *v.* Supervisors, 4 Minn. 184; Bradley *v.* Richmond, 6 Vt. 121; Burnham *v.* Fond du Lac, 15 Wis. 193 (1862), where the inconvenience of the opposite doctrine is forcibly pointed out by *Paine*, J.; Merrell *v.* Campbell, 49 Wis. 535; Drake on Attach., sec. 516, 10; Hadley *v.* Peabody, 13 Gray, 200; Brown *v.* Gates, 15 W. Va. 131. Approving text, Droz *v.* Baton Rouge, 36 La. An. 340; Walker *v.* Cook, 129 Mass. 577; State *v.* Eberly, 12 Neb. 616. That the *salary of an officer* of a municipal corporation cannot be garnished, see School District, &c. *v.* Gage, 39 Mich. 484; Hebel *v.* Amazon Ins. Co., 33 Mich. 407; Wallace *v.* Lawyer, 54 Ind. 501; Merwin *v.* Chicago, 45 Ill. 133; Chicago *v.* Halsey, 25 Ill. 595; Thayer *v.* Tyler, 5 Allen, 95; Colby *v.* Coates, 6 Cush. 559; Clark *v.* Mobile, 36 Ala. 621 (salary of school teacher); Hightower *v.* Staton, 54 Ga. 108; McLellan *v.* Young, 54 Ga. 399; s. c. 21 Am. Rep. 276; Hadley *v.* Peabody, 13 Gray, 200; *or be reached by proceedings supplementary to execution.* Roeller *v.* Ames, 33 Minn. 132.

In *Missouri*, also, it is held upon general principles that municipal corporations are not subject to garnishment on account of salary due to their officers. Hawthorne *v.* St. Louis, 11 Mo. 59 (1847); s. p. Fortune *v.* St. Louis, 23 Mo. 239 (1856), where the decision is placed upon the broad ground that such corporations are not liable to be garnished, and not on the ground that an officer's salary is exempt from such process. See also Neuer *v.* Fallon, 18 Mo. 277. Since the first edition of this work *the Supreme Court of Missouri has modified* in an important respect the broad statement of the doctrine held in the former cases. See Pendleton *v.* Perkins and the City of St. Louis, 49 Mo. 565 (1872). It was there held, after great consideration, that a city corporation in that State is subject to garnishment, where the main debtor has absconded so that judgment cannot be obtained against him, and he has no property in the State subject to attachment, but has money in the city treasury belonging or due to him; and that it may in such case be reached by bill in equity in the first instance without a previous judgment at law, and without showing fraud or other ground of equitable jurisdiction. It was so decided, notwithstanding the garnishment act in terms exempts municipal corporations from its operation. The opinion of *Bliss*, C. J., is very full and elaborate.

In *Tennessee*, a municipal corporation is not subject to garnishment at the suit of a creditor of one of its employees; citing Bank *v.* Dibrell, 3 Sneed, 379; Burnham *v.* Fond du Lac, 15 Wis. 193; Chicago *v.* Hasley, 25 Ill. 596; Baltimore *v.* Root, 8

Md. 102; Hawthorne *v.* St. Louis, 11 Mo. 59; Memphis *v.* Laski, 9 Heisk. 511 (1877); s. c. 21 Am. Rep. 327. So in *Georgia*, McLellan *v.* Young, 54 Ga. 399; s. c. 21 Am. Rep. 276. So in *Indiana*, Wallace *v.* Lawyer, 54 Ind. 501; s. c. 23 Am. Rep. 661. In *Kentucky* a city may be garnished in respect of salary due to officers. Rodman *v.* Musselman, 12 Bush, 354 (1876); s. c. 23 Am. Rep. 724.

In *Connecticut*, public officers having money in their hands, to which an individual is entitled, are not subject to garnishment at the suit of the creditors of such individual. Stillman *v.* Isham, 11 Conn. 123 (1835), and cases cited; Ward *v.* County of Hartford, 12 Conn. 404, 408. And in that State a county, not having power to contract a debt for which an action will lie against it, is not subject to garnishment in such a case. Ward *v.* County of Hartford, 12 Conn. 404. But under a statute enabling towns and cities to contract debts, and which provides that debts due from "any person" to a debtor may be attached, these corporations may be factorized or garnished. Bray *v.* Wallingford, 20 Conn. 416 (1850). In *New Jersey* a municipal corporation may be garnished. Davis *v.* Graves, 9 Vroom (38 N. J. L.), 104; see Jersey City *v.* Horton, 9 Vroom (38 N. J. L.) 88.

Alabama: In Underhill *v.* Calhoun, 63 Ala. 216 (overruling Smoot *v.* Hart, 33 Ala. 69), it was held that on grounds of public policy a judgment creditor of a municipal corporation cannot reach by garnishment funds accruing to it by taxation whether in course of collection or after being paid into the treasury. Mayor *v.* Rowland, 26 Ala. 498, holds that a municipal corporation cannot be garnished as respects accruing salaries to its officers. See also Clark *v.* School Comm'rs, 36 Ala. 621. But by act of the legislature (1866), process of garnishment lies against a municipal corporation to subject the wages or salary of a policeman to the satisfaction of a judgment obtained against him. City Council *v.* Van Dorn, 41 Ala. 505, overruling Mobile *v.* Rowland, and Clark *v.* Mobile S. C., 36 Ala. 621. In *Massachusetts* a county is not chargeable as a garnishee for jurors' fees. Williams *v.* Boardman, 9 Allen, 570. In *Maryland*, notwithstanding a general statute of the State authorized the garnishment of any "person or persons whatever, *corporate* or sole," it was held that municipalities were not included, and that, upon general grounds of public policy and convenience, the city could not be garnished in respect of money due from the salaries of its officers, although the officer whose salary was attached could have sued the city therefor. Baltimore *v.* Root, 8 Md. 95 (1855). The city, in this case, was garnished in respect of money due from it to a *police officer*.

But in *New Hampshire*, under a statute making "any *corporation* possessed of any money" of the debtor subject to garnishment, a *town* was held to be included. Whidden *v.* Drake, 5 N. H. 13. See Brown *v.* Heath, 45 N. H. 168. In *Iowa* it was held that the words "debtor or person holding property," in the attachment act, extended to municipal corporations, and that they were subject to garnishment with respect to ordinary debts which they owed the main debtor. Wales *v.* Muscatine, 4 Iowa, 302 (1856). The decision of the court asserts the liability to garnishment on general principles; but subsequently the legislature enacted that "a municipal or political corporation should not be garnished." Rev. 1860, sec. 3196. Under the legislation of Iowa, the exemption from garnishment is complete and universal. Jenks *v.* Township, 45 Iowa, 554. Requisites of notice to corporation, Claflin *v.* Iowa City, 12 Iowa, 284; Williams *v.* Kenney, 98 Mass. 142. In *Ohio*, under a statute which provides that "any claims or choses in action, due or to become due" to the judgment debtor, or "money which he may have in the hands of any person, body politic or corporate," are subject to execution, salaries of officers of incorporated cities, due and unpaid, may be subjected by the judgment creditors of such officers to the payment of their judgments, and municipal corporations may be garnished with respect to such salaries. The court admits the conflict in the decisions of other States upon similar statutes, but regards the construction above given as being in accordance with public policy and the meaning of

the statute. Newark *v.* Funk, 15 Ohio St. 462 (1864). In *Illinois*, municipal corporations are not subject to garnishment in any case, no matter what may be the character of the indebtedness. This position is maintained by *Lawrence*, J., with great force. Merwin *v.* Chicago, 45 Ill. 133; Burns *v.* Harper (money in hands of school directors), 59 Ill. 21 (1871); Millison *v.* Fisk, 43 Ill. 112. So in *Iowa*, Jenks *v.* Township, *supra*. Waiver. Clapp *v.* Walker, 25 Iowa, 315. In *Minnesota* a judgment debtor may be ordered to assign to his creditor a debt due him from a municipal corporation. Knight *v.* Nash, 22 Minn. 452 (1876). In *Texas* the view suggested in the text is adopted, and, in the absence of a statute, a city is subject to *garnishment for an ordinary debt* due by it to a third person. City of Laredo *v.* Nalle, 65 Tex. 359 (quoting text).

In *Kansas* a city cannot be garnished and made liable to pay a creditor of its creditor without express statutory provision. Switzer *v.* Wellington (Sup. Ct. Kansas, 1889), 28 Am. Law Reg. 281, and note citing and reviewing the cases. *Holt*, C., said: "Cities are a part of the government, and should not be required to become involved in litigation in which they have no interest. This exemption from garnishment process is based entirely upon the ground of public policy."