although the county may have power to erect a court-house and other necessary public buildings, this does not authorize the issue of commercial paper for that purpose.[1]

§ 124. **When Power will be held to exist.** — The *nature and extent of the power to borrow money and issue negotiable paper therefor* was considered at length by the United States Circuit Court for Missouri,[2] in which after a review of the decisions — English and American — the following conclusions were reached: Whether a municipal corporation possesses the power to borrow money, and to issue negotiable securities therefor, depends upon a true construction of its charter and the legislation of the State applicable to it. It has no *incidental or inherent authority* under the usual grants of municipal powers as a means of discharging its *ordinary municipal functions.* Such authority *may be inferred from special and extraordinary powers,* which require the expenditure of unusual sums of money, when it is usual to execute such powers by means of borrowing, and when, upon the whole legislation applicable to the municipality, such appears to have been the legislative intent.[3] These principles were applied; and coupon bonds to borrow money to erect and repair wharves and to open streets, *issued under the general grants of municipal power in the charter,* were held *not* to be binding upon the city, while other bonds *issued under a special act of the legislature, in payment of stock in companies* organized to construct macadamized roads from the city, were held to be valid.

§ 125. **Author's Views and Conclusions summed up.** — Whether there is *power in a municipal corporation to borrow money and to issue negotiable paper* depends, we think, upon the legislative intent, to be collected from statutes, general and special, applicable to the municipality or to the particular case in hand. The American cases are conflicting and cannot be harmonized.

The following summarizes our view of the sound and true doctrines on this subject: —

[1] Claiborne County *v.* Brooks, 111 U. S. 400 (1883); approving Police Jury *v.* Britton, 15 Wall. 566; distinguishing Lynde *v.* County of Winnebago, 16 Wall. 6, where the county had express legislative authority to borrow money for the erection of public buildings when authorized by the voters at an election called for the purpose. *Ante,* sec. 122, and notes.

[2] Gause *v.* Clarksville, 5 Dillon, 165, 183 (1879). Thomas *v.* Port Hudson, 27 Mich. 320 (1873), declares the remedy to be for the money or property received. *Post,* secs. 125, 126, 161 and notes. The remedy where bonds of a city are issued without authority and the money thereon is actually received by the city, is not an action on the bonds, but to recover the money. Gause *v.* Clarksville, *supra.* See also Robertson *v.* Breedlove, 61 Tex. 316. *Infra,* sec. 126 note.

[3] *Infra,* sec. 161, and note; and *post,* chap. xiv. on Contracts.



1. The power to borrow money as a means of raising a fund to make future local improvements, or to carry on the ordinary operations of the municipality, cannot be implied from the *mere* authority to make such improvements or from the usual grants of municipal power. These contemplate that the expense of the execution of the ordinary municipal powers shall be met by the revenues derived year by year from taxation.

2. It does not follow because banking, trading corporations and other private corporations organized for pecuniary profit are held in this country to possess the incidental power to borrow money, and to issue commercial paper having all the qualities attributed to such paper by the law merchant, that a like power is inherently possessed by public and municipal corporations.[1] The analogy is false and

[1] As to the power of corporations to issue commercial paper, the law of England is settled. In *England* no corporation, whether municipal (Reg. *v.* Lichfield, 4 Ad. & El. N. S. 891, 906) or private (Bateman *v.* Mid-Wales Railway Co., L. R. 1 C. P. 499, 1866), has the incidental right to make commercial paper, except the Bank of England, which was incorporated for the very purpose, and trading corporations strictly, such as the East India Company. Accordingly it is laid down by Mr. Justice *Byles,* in his work on bills, that, "without special authority, expressed or implied, a corporation has no power to make, indorse, or accept bills or notes." Byles on Bills (8th Eng. ed.), 62; Grant on Corp. 276. Thus, a water-works company (Broughton *v.* Manchester Water-Works, 3 Barn. & Ald. 1), a gas joint-stock company (Bramah *v.* Roberts, 3 Bing. N. C. 963), or even trading companies, unless such a power is essential to the purposes for which they are formed (Bateman *v.* Railway Co., *supra*), have no general or implied authority to make commercial paper. In Bateman's case, last cited, the question for the first time arose in England, as late as 1866, as to the right of a railway company, with an authorized capital of £170,000, to make or accept bills of exchange, and it was unanimously decided, by judges of great eminence (*Erle,* C. J., *Byles, Keating,* and *Montague Smith,* JJ.), that the company had no such power. The acceptance was under seal, and it is a mistake to suppose that the decision rested on the technical ground that a corporation can only contract under seal. It was placed upon the broad ground that there was no act of parliament, general or special, which conferred the power. It was admitted by all the judges that the railway company might incur debts in the construction or operation of the road; "but it is one thing," says *Keating,* J., "to say that they shall be liable to be sued for goods sold and delivered or for work done, and an entirely different thing to say that they may accept bills in payment." And to the same effect was the opinion of the other judges. The principle of this case was approved in The Peruvian, &c. Railway Co. *v.* Thames, &c. Insurance Co., L. R. 2 Ch. 617, when a general incidental power to issue bills of exchange and negotiable instruments under the Companies Act of 1862 was denied, and the power held to depend upon the proper construction of the memorandum and articles of association. The companies organized under that act may communicate this power to their directors, but it must be given expressly or by fair intendment in the memorandum and articles of association of the company, or it will not exist. In England, as shown by Bateman's case, *supra,* it is held that, inasmuch as the corporation has no power to accept bills, it cannot be made liable on its acceptance, though the bill was drawn for a valid and binding debt. On this point *Erle,* C. J., says: "The bill of exchange is a cause of action, a contract, by itself,

delusive. The purposes of the two classes of corporations, the powers of their officers, and the means of making provision for meeting their liabilities, are all essentially different. The nature of the usual duties devolved by law upon municipalities does not make it necessary to imply the existence of a *general power* to borrow money and to issue commercial paper. The consequences of recognizing such a power, in the extravagance it will stimulate, in the frauds it will engender, and in the onerous indebtedness it will inevitably produce, are alarming to contemplate. The history of the express power given to municipalities to aid railways by borrowing money and issuing commercial obligations is full of warning and instruction.

3. The power to issue commercial paper which is unimpeachable in the hands of the holder is not among the ordinary incidental powers of a public or municipal corporation. It must be conferred expressly, or by fair implication, as a necessary, or at least a reasonable and usual means of executing the particular power to which it is claimed to be incidental.

4. *Express power to borrow money*, perhaps in all cases, but especially if conferred to effect objects for which large or unusual sums are required, as for example subscriptions to aid railways and other public improvements, will ordinarily be taken, if there be nothing in the legislation to negative the inference, to include the power (the same as if conferred upon a corporation organized for pecuniary profit) to issue negotiable paper with all the incidents of negotiability.[1]

which binds the acceptor in the hands of an indorsee for value; and I conceive it would be altogether contrary to the principles of the law which regulates such instruments that they should be valid or not according as the consideration between the original parties was good or bad, or whether, in the case of the corporation, the consideration in respect of which the acceptance is given is sufficiently connected with the purpose for which the acceptors are incorporated. It would be inconvenient to the last degree if such an inquiry could be gone into. Some bills might be given for a consideration which was valid, as for work done for the company, and others as a security for money obtained on loans beyond their borrowing powers. It would be a pernicious thing to hold that, in respect of the former the corporation might be sued by an indorsee, but in respect of the latter, not." See subject discussed in Gause *v.* Clarksville, 5 Dillon, 165 (1879).

In *America* the courts, however, have generally held that banking, trading, commercial, railway, and other *private* corporations, organized for pecuniary profit, have an incidental power to issue commercial paper when such power is not negatived by a true construction of their charters or constituent acts. See *ante*, secs. 117, 118; also chapter on Contracts, *post*.

[1] *Ante*, sec. 117, note; *post*, secs. 127, 161, note, and chap. xiv. on Contracts, sec. 507 *et seq.*; Williamsport *v.* Commonwealth, 84 Pa. St. 487; Commonwealth *v.* Pittsburg, 34 Pa. St. 496; Reinboth *v.* Pittsburg, 41 Pa. St. 278; Middleton *v.* Allegheny Co., 37 Pa. St. 241; Seybert *v.* Pittsburg, 1 Wall. 272; Galena *v.* Corwith, 48 Ill. 423; Kelly *v.* Mayor, 4 Hill (N. Y.), 265; DeVoss *v.* City Richmond, 18 Gratt. 338; R. R. *v.* Evansville, 15 Ind. 395; Police Jury *v.* Britton, 15 Wall. 572; Daniel on Nego. Inst. secs. 1527 and 1531; Rogers *v.* Burlington, 3 Wall. 654, 666; Milner's Admr. *v.* Pensacola, 2 Woods, 637; Mayor *v.* Inman, 57 Ga. 370; Tucker *v.* City of Randolph, 75 N. C. 267; City of Vicksburg *v.* Lombard, 51 Miss. 125; Mercer Co. *v.* Hacket, 1 Wall. 95. See cases cited in notes to sec. 488, *post*. In Holmes *v.* Shreveport, 31 Fed. Rep. 113 (1887), the Circuit Court of the United States, *Boarman*, J., while recognizing the rule that there is no implied general power to issue commercial paper (*Ib.* p. 115), held that a city vested with extensive powers and authorized to contract for the construction of public works, to give bonds, &c., had power to issue bonds to evidence the credit part of the price agreed to be paid to the contractor for certain public works, and that such bonds are protected by the law merchant in the hands of a *bona fide* holder. See also Dorian *v.* Shreveport, 28 Fed. Rep. 287. As to *public buildings*, *post*, sec. 140, where a municipality is given express power to "negotiate loans in anticipation of the revenues thereof," bonds negotiable in form are not void, but they lack the characteristics with which actual negotiability would clothe them. Sioux City *v.* Weare, 59 Iowa, 95.





5. When it is expressly provided by statute, that public and municipal corporations shall audit all claims presented, and shall *issue to the creditor warrants or orders*, and no other provision is made, this will not authorize as a means of payment the issue of negotiable or commercial paper which shall possess all the incidents of negotiability; and if issued, it is subject to all defences in the hands of a transferee to which it would be subject in the hands of the original holder.[1]

6. Although a municipal corporation proper, in the execution of its ordinary corporate powers and the discharge of its corporate duties, may make contracts and create debts, and may, when not restrained by statute, evidence the liabilities thus incurred, yet if the instrument is made to assume the form of negotiable paper, such paper is always open to defences in the hands of transferees when it is issued without express authority from the legislature, or authority fairly to be implied from the charter or legislation applicable to the municipality.[2]

§ 126. **Same subject.** — Stated in other words, the author regards it as the true doctrine that, *merely as incidental to the discharge of*

[1] For difference between such warrants and orders and negotiable paper, see *post*, sec. 487.

[2] The arguments in support of the propositions of the text embodied in this section will be found to be ably presented by *Bradley*, J., in The Mayor of Nashville *v.* Ray, 19 Wall. 468 (1873); by *Beasley*, C. J., in Hackettstown *v.* Swackhamer, 37 N. J. L. (8 Vroom) 191 (1874); and by *Agnew*, C. J., dissenting in Williamsport *v.* Commonwealth, 84 Pa. St. 487, 505 (1877). See also Gause *v.* Clarksville, 5 Dillon, C. C. R. 165 (1879); Knapp *v.* Hoboken, 39 N. J. L. (10 Vroom) 394 (1877).

The authorities in favor of the other view are collected, and the argument in support of that view is presented with fulness, in the opinion of the majority of the court, delivered by *Paxson*, J., in Williamsport *v.* Commonwealth, *supra*.

*its ordinary corporate functions*, no municipal or public corporation has the right to invest any instrument it may issue, whatever its form, with that supreme and dangerous attribute of commercial paper which insulates the holder for value from defences and equities which attach to its inception. This point ought to be guarded by the courts with the utmost vigilance and resolution.[1]

§ 127 (83). **Express Power to borrow Money; Negotiable Paper.** — *Express power* to a municipal corporation "to borrow money" is usually held to include the power to issue its negotiable bonds, or other securities to the lender.[2] But it does not include the power

[1] If money is improperly borrowed in advance of liabilities actually created, and reaches the municipal treasury, and is expended by direction of the governing body for authorized municipal objects, the municipality may then in the absence of controlling statute or constitutional provision to the contrary (see *post*, secs. 130–138) be liable in the proper action or suit; but the action should be, we think, for money had and received or by suit in equity, and not upon the invalid bonds. Bateman *v.* Mid-Wales Railway Co., L. R. 1 C. P. 499 (1866); Thomas *v.* Port Hudson, 27 Mich. 320; Hackettstown *v.* Swackhamer, 37 N. J. L. 191; Reg. *v.* Lichfield, 4 Ad. & El. N. s. 891, 906; Mayor &c. *v.* Ray, 19 Wall. 468, 480, *per Bradley*, J.; *ante*, sec. 124, note. *The holder of such bonds, will, it seems, be considered as the assignee and owner of the original claim of the payee.* Oneida Bank *v.* Ontario Bank, 21 N. Y. 490; Mayor &c. *v.* Ray, 19 Wall. 468, 484, *per Hunt*, J.; Shirk *v.* Pulaski County, 4 Dillon, 208 (1877); Paul *v.* Kenosha, 22 Wis. 266; Gause *v.* Clarksville, 5 Dillon, C. C. 165 (1877); *post*, secs. 130–138, note; chapter xiv. on Contracts. In Hackettstown *v.* Swackhamer, *supra*, any remedy upon the unauthorized note was denied, and *Beasley*, C. J., seemed to think the only remedy was in equity to be subrogated to the rights of the creditors of the corporation who had been paid by the proceeds of the money improperly borrowed; but no necessity is perceived for so strict a doctrine.

[2] Commonwealth *v.* Pittsburg, 34 Pa. St. 496, 511 (1859); Railroad Co. *v.* Evansville, 15 Ind. 395, 412 (1860); Middleton *v.* Allegheny Co., 37 Pa. St. 241; Reinboth *v.* Pittsburg, 41 Pa. St. 278; Seybert *v.* Pittsburg, 1 Wall. 272; Rogers *v.* Burlington, 3 Wall. 654, 666, *per Clifford*, J.; DeVoss *v.* Richmond, 18 Gratt. (Va.) 338; s. c. 7 Am. Law Reg. (N. s.) 589; Galena *v.* Corwith, 48 Ill. 423 (1868); *post*, sec. 488; German Bank *v.* Brenham, 35 Fed. Rep. 185 (1888). Money borrowed, and note given by officers of a town, without authority, does not bind the town in case it never receives the benefit of it. Benoit *v.* Conway, 10 Allen, 528; People *v.* Supervisors, 34 N. Y. 516; Police Jury *v.* Britton, 15 Wall. 566.

The ground has been broadly taken, that for debts and obligations lawfully created, any corporation, public as well as private, has the implied authority, unless prohibited by statute, charter or by-law, to evidence the same by the execution of a bill, note, bond, or other contract, and to secure the same by a mortgage, pledge, or other proper disposition of its property; that power to contract a debt carries with it the power to give a suitable acknowledgment of it; and there is no rule of law in the absence of a statute limiting the length of the credit. Municipality *v.* Mc Donough, 2 Rob. (La.) 242, 250 (1842); Barry *v.* Merchants' Express Company, 1 Sandf. Ch. 280; cited with approval in Curtis *v.* Leavitt, 15 N. Y. 9, 62, and in Smith *v.* Law, 21 N. Y. 296, 299 (1860); Bank, &c. *v.* Chillicothe, 7 Ohio, Part II. 31 (1836); Ketchum *v.* Buffalo, 14 N. Y. 356 (1856), market-house bonds given on twenty-five years' time held valid; and see cases cited on



to *issue notes to circulate as money*, in violation of the statute law and public policy of the State.[1]

page 375, by *Wright*, J.; Douglass *v.* Virginia City 5 Nev. 147; Richmond *v.* McGirr, 78 Ind. 192 (1881), noted *supra*, sec. 119, note. See, also, and compare, Bateman *v.* Mid-Wales Railway Co., L. R. 1 C. P. 510; Hackettstown *v.* Swackhamer, 37 N. J. L. 191; Wyandotte *v.* Zeitz, 21 Kan. 649; Lawrence *v.* Kellam, 11 Kan. 512.

*As to express power to issue bonds*, &c., see also Bank of Rome *v.* Village of Rome, 18 N. Y. 38, 44, and cases cited; Mills *v.* Gleason, 8 Am. Law Reg. 683; Louisiana State Bank *v.* Orleans Navigation Co., 3 La. An. 294. State bonds negotiable. Delafield *v.* Illinois, 2 Hill, 159.

*Express power to a municipal corporation to subscribe for stock in a railroad corporation* does not carry with it the power to issue negotiable bonds in payment of the subscription, unless the power to issue such bonds is expressly, or by reasonable implication, conferred by the statute; and such power is negatived where the statute authorizing the subscription is silent as to the issue of bonds, and makes special provision for the payment of the subscription by taxation. Kelley *v.* Milan, 127 U. S. 139, 150, and cases cited; Norton *v.* Dyersburg, 127 U. S. 160, and cases cited. *Post*, sec. 161, note. As to the *implied power* to issue municipal bonds, see further, Wells *v.* Supervisors, 102 U. S. 625; Claiborne County *v.* Brooks, 111 U. S. 400; Ottaway *v.* Carey, 108 U. S. 110, 123; Daviess County *v.* Dickinson, 117 U. S. 657, 663.

*Power "to borrow money"* held to include power *to issue negotiable bonds or other usual securities to the lender*. Commonwealth *v.* Pittsburg, 34 Pa. St. 496, 511; Rogers *v.* Burlington, 3 Wall. 654 (1865); *ante*, sec. 117. Board of Supervisors of a county have not power to *issue bill of exchange*. Canal Bank *v.* Supervisors, &c., 5 Denio, 517 (1848). Nor have village trustees. Lake *v.* Trustees, 4 Denio, 520. Corporate city has the power. Kelly *v.* Mayor, 4 Hill, 263; compare Clark *v.* Des Moines, 19 Iowa, 199, 213. In Inhabitants, &c. *v.* Weir, 9 Ind. 224 (1857), an action against a congressional township upon a promissory note made by the trustees, the court, *per Stuart*, J., says: "There is no power to make notes conferred by the act of 1841. That act was the charter under which they acted. The trustees, as a corporation, had no power but such as that act expressly conferred, and such as might arise by implication, or be essential to the exercise of those granted. Such a power is always expressed, even in bank charters. In so limited a corporation as a congressional township, the power to make promissory notes could hardly be implied. The case at bar cannot easily be distinguished in principle from McClure *v.* Bennett, 1 Blackf. 189, and Mears *v.* Graham, 8 Blackf. 144." Power to borrow money, if granted on condition of a previous popular vote, must be exercised in conformity with the condition or the orders issued therefor will be void. Lockport *v.* Gaylord 61 Ill. 276 (1871). What amounts to a borrowing. *Ib.* In *Illinois* the Constitution of 1848 gave to municipal corporations the power to assess and collect taxes for *corporate purposes*. This was construed to be a limitation upon the taxing power of the State, under which such corporations could not be taxed except for corporate purposes; and, consequently, bonds issued "for the use of said city, to be expended in developing the natural advantages of the city for manufacturing purposes," were declared void, although the enterprise intended to be aided was recognized as being of general interest and of great value to the city. Mather *v.* Ottawa, 114 Ill. 659. *Post*, secs. 159, 736.

[1] Thomas *v.* Richmond, 12 Wall. 349 (1871).

Construction of the constitutional power of the general government to "*borrow money*." See Hepburn *v.* Griswold, 8 Wall. 603, Knox *v.* Lee, 12 Wall. 457 (1871), and Juilliard *v.* Greenman, 110 U. S. 421 (1884), known as the "legal-tender cases."

§ 128. **The Subject illustrated; Place of Payment, etc.** — Express charter power to *borrow money for general purposes, not exceeding a specified sum*, was held by the Supreme Court of the United States, upon an examination of the nature of other powers contained in the charter, not to prohibit or limit the city in incurring an indebtedness for *authorized purposes* greater than the sum it was empowered to borrow.[1]

§ 129 (84). **What is a borrowing; Power construed.** — A *contract* whereby a city agrees with an individual that if the latter will pay or advance the amount of interest due and to become due on certain bonds of the city already issued, the city will pay or refund the amount, is "*not a borrowing of money*" within the terms or spirit of the charter prohibiting the municipal authorities from borrowing money unless authorized by a prior vote of the citizens; such a contract being one simply for the payment of a debt.[2] Under authority to a city to borrow money, it may, if there be no statutory restriction, make *the principal and interest payable at the place where the money is borrowed or where it pleases, though beyond the limits of the State.*[3] Among certain powers of a strictly municipal nature conferred upon a city was the power "to borrow money for any object in its discretion," or "for any public purpose," on a two-thirds vote of the citizens; and this was held, in connection with a general statute of the State, recognizing by implication (as construed) the validity of city and county bonds generally, to authorize such city to issue bonds to aid in the construction of a railway or plank road leading to, through, or from the city.[4]

[1] Hitchcock *v.* Galveston, 96 U. S. 341 (1877); approved, United States *v.* Fort Scott, 99 U. S. 152.

[2] Gelpecke *v.* Dubuque, 1 Wall. (U. S.) 221 (1863), *Miller*, J., dissenting. Where a city can make such a contract, with the sanction of a prior vote, the sanction will, in an action on such a contract, be presumed until the contrary is shown by the city. *Ib. per Swayne*, J.

[3] Meyer *v.* Muscatine, 1 Wall. (U. S.) 384 (1863). In this case, the court, *per Swayne*, J., say (1 Wall. 391): "The power of a municipal corporation to make any contract does not depend upon the place of performance, but upon its scope and object. A city authorized to establish gas-works and water-works, and to gravel its streets, may buy water, coal, and gravel beyond its limits, and agree to pay where they are found, or elsewhere. The principal power, when expressed, draws to it, by necessary implication, the means of its execution. This is the settled rule in the construction of all grants of authority, whether to governments or individuals." *Express authority to a city "to borrow money"* necessarily implies the power to determine the time of payment, and to issue bonds or other evidence of indebtedness, to borrow within or without the State, and to agree to pay where borrowed. Railroad Co. *v.* Evansville, 15 Ind. 395, 412 (1860), distinguished as to place of payment from Prettyman *v.* Tazwell Co., 19 Ill. 406; 22 Ill. 147, which were regarded as turning upon peculiar statutory provisions. See further, chapter xiv. on Contracts, *post.*

[4] Meyer *v.* Muscatine, 1 Wall. (U. S.) 384 (1863), *Miller*, J., dissenting, in an opinion of marked ability; Mitchell *v.* Burlington, 4 Wall. 270 (1866); Rogers *v.* Burlington, 3 Wall. 654 (1865). General power granted to a city to create a debt will be construed to mean debts for *specified, legitimate, and proper municipal purposes*, and not for any or all purposes, at the discretion of the city council or inhabitants. Lafayette *v.* Cox, 5 Ind. (Porter) 38 (1854). *Limitation on taxing power does not limit power to contract debts.* Emerson *v.* Blairsville, 2 Pittsb. (Pa.) Rep. 39; *post*, sec. 162. See, further, ch. xiv. on Contracts, *post.*



§ 130 (85). **Special Limitations on the Power to become indebted; Creation of Debt defined.** — Provisions are frequently made in Constitutions or in charters or legislative acts to *prevent the creation or increase of municipal indebtedness beyond specified limits or except upon certain conditions.* Such limitations have been found by experience to be necessary to prevent extravagance, are remedial in their nature, are based upon the wise policy of paying as you go, and ought, therefore, to be construed and applied to secure the end sought. The cases referred to will show that the courts have fairly given them full effect. The judicial construction of some of these provisions will be noticed in this place.

The Constitution of Maryland contains a provision that "*no debt shall be created* by the mayor and city council of Baltimore" (except for specified temporary purposes), *unless it shall be first sanctioned by the legislature and approved by the voters of the city.* The city, being the owner of a large amount of stock in the Baltimore and Ohio Railroad Company, without previous legislative authority or the approval of the voters passed an ordinance to provide for the *raising* of one million of dollars by hypothecating its railroad stock, and for the investment of the same in the bonds of another railroad company whose road was in process of construction. The validity of this ordinance being drawn in question, the court considered it to be plain that the constitutional provision quoted was intended to prohibit the city from aiding in the construction of works of internal improvement without the previous assent of the legislature and of a majority of the voters of the city; and that the ordinance (notwithstanding the ingenious use of the phrase *raising* instead of *borrowing* money, and the further provision that the parties furnishing the money should look for its repayment exclusively to the stock pledged, and that the city should not be responsible for any deficit) did create a debt within the meaning of the Constitution, and was therefore void.[1]

[1] Baltimore *v.* Gill, 31 Md. 375 (1869), distinguished, Richmond *v.* McGirr, 78 Ind. 192, 196 (1881). That a debt may be *created* by borrowing money, although there be a provision exempting the borrower from liability beyond the property pledged, see Newell *v.* People, 3 Seld. (7 N. Y.) 9, 87. Where a municipal corporation is *forbidden by the Constitution* to become indebted in any amount exceeding a specified limit, *held*, 1, that if it exceed the limited amount it may be enjoined; 2, that the bill is maintainable by a citizen and taxpayer of the place. Springfield *v.* Edwards, 84 Ill. 626 (1877). Remedy of

§ 131 (86). **Special Charter Limitations construed.** — Under a charter prohibiting the common council of a city from "*authorizing any expenditure for any purpose,*" in the current political year, *ex-*

taxpayer, see *post*, secs. 914–922. Such a limitation was held to forbid *implied* as well as express indebtedness, and to be binding equally upon courts of equity and of law. Litchfield *v.* Ballou, 114 U. S. 190 (where relief in equity was denied to one who had loaned money to a city, in excess of its constitutional limit of indebtedness, which had been used in constructing public works, and who prayed for a return of the money). Where the contract of a town to issue its bonds was illegal because the issue would create a debt in excess of its power under the Constitution to contract, the fact that it afterwards, under the general municipal incorporation law, became a city with power to create a debt in a greater amount, was held not to validate the contract made while it was a town, and that the city could not ratify the contract. Waxahachie *v.* Brown, 67 Tex. 519; Gould *v.* Paris, 68 Tex. 511.

The charter of Atlantic City in New Jersey contained a limitation that its debt "shall at no time exceed $35,000." The city was indebted in this sum when it entered into *a contract with a water company to supply itself with water for public purposes for an indefinite period, making no provision, however, to raise by taxation the amount that the city could be called on to pay under the contract.* On *certiorari*, bringing up the contract for judicial review, it was held that the contract and ordinances were *ultra vires*, and the same were set aside. After reviewing the cases cited *infra*, sec. 136 *et seq.*, from Iowa, Illinois, Indiana, and Pennsylvania, *Magie*, J., said: "It is impossible, perhaps, to entirely reconcile these cases. The true interpretation of such restrictions on municipal indebtedness, in my judgment, lies between the extremes they exhibit. The plain object of such restrictions is to require that all moneys which are to be paid for municipal expenses, after the debt has reached the fixed limit, shall be raised by taxation. In view of this object, it is clear (and all the cases agree in this) that prohibitions against increasing the indebtedness, or the debt, of a municipality are not to be construed as limited to obligations which are debts *eo nomine*, but are to be extended to all contracts for the payment of money or contracts whereon the payment of money may be enforced. But where the money to be paid upon such contracts is provided for, to be raised by taxation upon some fixed and definite scheme, such contracts are not, in my judgment, within such prohibitions. Where, however, the money required to meet such contracts is not provided for, either by being legally ordered to be raised by taxation and appropriated for that purpose, or by some legislative scheme which positively prescribes that it shall be raised by taxation and appropriated for its payment as needed, then such contracts do increase the indebtedness or debt of municipal corporations within the meaning of such prohibitions. Any other construction would deprive these restrictions of the force requisite to reach and cure the evil intended to be prevented thereby." Read *v.* Atlantic City, 49 N. J. L. (20 Vroom) 558.

In *Louisiana* it was held that an act of the legislature prohibiting *counties and cities from thereafter "contracting any debt or pecuniary liability,* without fully providing, in the ordinance creating the debt, the means of paying the principal and interest of the debt so contracted," *does not extend to a liability for ordinary street work*, which forms part of the current expenses of the corporation, and which may be paid out of its current revenues. Reynolds *v.* Shreveport, 13 La. An. 426 (1858). A provision in a city charter that the council shall not have power to pledge the credit of the city for more than a specified sum *without submitting the question to the voters of the city* was regarded as a definite restriction on the power; and hence a statute authorizing the city to issue bonds to defray the expenses of building a bridge is subordinate to, and does not override, the restriction in the charter. Cumberland *v.* Magruder, 34 Md. 381 (1871). But see Butz *v.* Muscatine, 8 Wall. 575 (1869); *post*, sec. 162.



*ceeding the amount of the annual tax levy*, the council cannot authorize any expenditure to be made within the year exceeding the limit; but they are not forbidden to authorize in that year an expenditure to be made in a subsequent year, for services to be performed in such subsequent year.[1] The charter of *Chicago* contained the provision that "*no contract shall be made by the common council, and no expense incurred unless an appropriation shall have been previously made concerning such expense,*" and the comptroller is required to submit each year an estimate of the amount necessary to defray the expenses of the city for the current year. With this provision in force the *city made a contract with a gas company* whose works were already complete to take gas for its streets and public buildings at a specified price for the period of ten years. This contract was held invalid on the ground that under the above charter provision there was *no actual or reasonable necessity to make a contract extending over ten years*, no appropriation having been made commensurate with the obligations of the contract; and aside from the special provision of the charter, the court inclined to the same result on the ground that the power was legislative and that the council could not, without any reasonable necessity appearing, bind their successors for ten years or indefinitely. Drummond, J., added, "In all cases of contracts to run for years, the authority to make them should be clear. It is better that all parties should understand there is a limit to the power of municipal bodies in such cases."[2]

§ 132. **Special Charter Limitation construed.** — The city of *Galveston* under a provision of its charter authorizing it to construct sidewalks and make street improvements and to reimburse itself for

[1] Weston *v.* Syracuse, 17 N. Y. 110 (1858). See, also, Cook *v.* City of Buffalo, 1 Clinton's N. Y. Digest, "Buffalo," sec. 2. Limitation on rate of tax to be annually levied construed. State *v.* Mayor, 23 La. An. 358. *Funded debts.* — The charter of a city provided that "no *funded debt* shall be contracted." It was decided, that a city bond, issued on time, for the purchase of market grounds, was not a funded debt. Ketchum *v.* Buffalo, 14 N. Y. 356. Meaning of "funded debt" and "funding" considered by *Selden*, J., *Ib.* p. 367, and by *Wright*, J., p. 378. City may *fund* valid bonds and issue new bonds therefor, without express authority. Galena *v.* Corwith, 48 Ill. 423 (1868); Burr *v.* Carbondale, 76 Ill. 455, 474 (1875). See Smith *v.* Morse, 2 Cal. 524; Police Jury *v.* Britton, 15 Wall. 566; *ante*, secs. 63, 69.

[2] Garrison *v.* Chicago, 7 Biss. 480 (1877), *Drummond*, J.; *ante*, sec. 97. The statute of *California*, which declares that the board of supervisors must not contract debts and liabilities which, added to the salaries of officials, will exceed the revenue of the county for the year, does not mean by "*revenue*" the actual amount of money received into the County Treasury, but the estimate of the board of supervisors of what the revenue will be. Babcock *v.* Goodrich, 47 Cal. 488 (1874).