that a corporation may make a contract (at least for necessaries) covering a series of years, upon which an obligation to pay may arise from year to year as the thing contracted for is furnished; and in such case, *the whole amount* which may ultimately become due *does not constitute a debt* within the constitutional prohibition. But in order to ascertain whether the corporation by such contract is transgressing the limit, regard is had only to the amount which may fall due within a certain year or other period; and if the revenues for that year or other period are sufficient, over and above the payment of the other expenses, to pay such amount, there is no debt incurred within the constitutional prohibition.[1]

§ 136 *b*. **City Stock in Sinking-Fund not a Debt.** — The Constitution of New York (sec. 11, art. 8) was in 1884 amended, *inter alia*, by ordaining that "No county containing a city of over one hundred thousand inhabitants, or any such city, shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed ten per centum

[1] Grant *v.* Davenport, 36 Iowa, 396 (water supply); E. St. Louis *v.* E. St. Louis, &c. Co., 98 Ill. 415 (gas supply); Valparaiso *v.* Gardner, 97 Ind. 1 (water supply); Appeal of City of Erie, 91 Pa. St. 398, *semble* (city market-house).

Compare Coulson *v.* Portland, Deady, 481, where the debt was for a railroad subsidy, and it seems there would have been an *absolute debt* for the whole amount *immediately*, though payable *in futuro*.

In Jacksonville Ry. Co. *v.* City of Jacksonville, 114 Ill. 562 (1885), an assessment had been made by the municipal authorities, pursuant to statute, against the property of the railway company for its ratable portion of the estimated cost of a pavement, the construction of which was proposed and authorized. The municipal ordinance which authorized the construction and assessment contained a provision that the part of the cost of the pavement that would fall on the city should be raised by general taxation. In a proceeding to review the validity of the assessment, the railway company offered to show that the city was already indebted in excess of the constitutional limit. The court held that as the ordinance did not create a debt it did not violate the constitutional provision. See *supra*, sec. 130, note; Wallace *v.* San Jose, 29 Cal. 180; Niles *v.* Niles, 11 Am. & Eng. Corp. Cases, 299.

A statute in *Nebraska* provided that "it shall not be lawful for any warrants to be issued for any amount exceeding in the aggregate the amount levied by tax for the current year." The county commissioners after the exhaustion of the levy allowed claims against the county, and levied a tax under the name of a "sinking-fund tax" for their payment. The tax was held illegal, because under the legislation of the State a sinking-fund tax is authorized only in the case of *loans*, and an audited claim is not a loan. U. P. R. R. Co. *v.* Buffalo County, 9 Neb. 449.

A city council in *Ohio* was authorized to levy not to exceed fifteen mills on the dollar for all municipal purposes. It first levied for fifteen mills, and later made an additional levy of two mills for the same year. The additional levy of two mills was held void. In 1874 the same city council had authority to make the same levy as in 1871. It first levied ten and five-tenths mills, and later made an additional levy of sixteen mills. The additional levy of sixteen mills was held *void throughout*. Cummings *v.* Fitch, 40 Ohio St. 56.

of the assessed valuation of the real estate of such county or city subject to taxation, as it appeared by the assessment rolls of the said county or city on the last assessment for State or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as may now exist, shall be absolutely void, except as herein otherwise provided. No such county or such city whose present indebtedness exceeds ten per centum of the assessed valuation of its real estate subject to taxation shall be allowed to become indebted in any further amount until such indebtedness shall be reduced within such limit." Construing this provision, it was held by the Court of Appeals that "*city stock*" *of the city of New York* held by the Commissioners of the Sinking Fund for that city *is not an indebtedness of the city within the meaning of the constitutional provision*, since such city stocks are not debts which the municipality can be called upon to pay, and that the indebtedness referred to in the Constitution is an indebtedness to be met in the future by taxation.[1]

§ 137 (89). **Liabilities ex delicto.** — *A restrictive provision in a city charter*, that the "council shall not create or permit to accrue any debts or liabilities which shall exceed" a specified sum, unless a certain course be pursued by the council and approved by a vote of the people, has been considered to have *no relation to liabilities arising ex delicto*, or to those which the law may cast upon the corporation, and to apply at most only to contracts or liabilities voluntarily created. The court, indeed, seems to consider the provision as directory simply, and not as a limitation on the power of the council to create debts.[2] The provision in the Constitution of Iowa referred to in a preceding section, although it is construed by the Supreme Court of the State to fix an absolute limit to the amount of indebtedness which a municipality has the power to incur,[3] is by

[1] Bank for Savings *v.* Grace, Mayor, &c. of New York, 102 N. Y. 313. After referring to the constitutional amendment and reviewing the legislation respecting the sinking fund of the city of New York, the court said: "This construction cannot lead to a diversion of the sinking fund, but to the accomplishment of its object. It satisfies also the intent of the constitutional prohibition. That is aimed at an actual, not a theoretical indebtedness, — at a substantial liability which can be discharged only by the enforcement of a tax or an assessment which, when levied, will be a charge upon the taxpayer and a burden for him to remove; not a formal obligation which may remain as evidence of a once existing debt, but which can in no way be regarded as a present debt to be enforced, and which, if not before cancelled in the discretion of the commissioners, becomes waste paper by the mere efflux of time."

[2] McCracken *v.* San Francisco, 16 Cal. 591 (1860); *supra*, sec. 134 *a*.

[3] French *v.* Burlington, 42 Iowa, 614 (1876); *supra*, sec. 135.

the same court held to have no application to *liabilities arising in tort;* and it is, therefore, no defence in an action against the municipality for damages caused by a defective street or sidewalk that it was indebted at the time of the accident up to or beyond the constitutional limit.[1]

§ 138 (90). **Limitation on State Indebtedness.** — Constitutional *limitations on State indebtedness* apply to the State alone, and not to her political and municipal subdivisions.[2] A legislative provision prohibiting the *city authorities* from incurring an indebtedness beyond a designated amount does not apply to the legislature of the State; and the latter may, of course, by a subsequent act, authorize an increase of the amount.[3]

§ 139 (91). **Rewards for Apprehension of Offenders.** — The *governing body* of a municipal corporation (which has express power to protect the property and promote the welfare of its inhabitants) may, it has been held, offer a reward for the detection of offenders against the *general safety of its people*, as, for example, those guilty of the crime of arson within the corporate limits.[4] The contrary doctrine has also been held.[5] If the reward be offered by the mayor of a

[1] Bartle *v.* Des Moines, 38 Iowa, 414 (1874); Rice *v.* Des Moines, 40 Iowa, 638 (1875); *supra*, sec. 134 *a*.

[2] Pattison *v.* Supervisors, 13 Cal. 175 (1869); Cass *v.* Dillon, 2 Ohio St. 607 (1853); Slack *v.* Railroad Co., 13 B. Mon. 16; Clark *v.* Janesville, 10 Wis. 136; Prettyman *v.* Supervisors, 19 Ill. 406. A constitutional provision that "the State shall never be a party to carrying on any works of internal improvement" does not disable the legislature from authorizing municipalities and counties to subscribe for the stock of railway companies and issue their bonds to pay therefor. Comm'rs *v.* Miller, 7 Kan. 479 (1871); s. c. 12 Am. Rep. 425. See People *v.* Supervisors, 16 Mich. 254, and Mr. Justice *Lowe's* individual opinion — not the court's — in State *v.* County of Wapello, 13 Iowa, 388, 418–422; Dubuque County *v.* Railroad Co., 4 G. Greene (Iowa), 1; Dean *v.* Madison, 7 Wis. 688.

[3] Amey *v.* Allegheny City, 24 How. (U. S.) 364 (1860). Construction of particular limitation. *Ib.* See, on the general subject, Wallace *v.* Mayor, 29 Cal. 180; Wyncoop *v.* Society, 10 Iowa, 185; Rice *v.* Keokuk, 15 Iowa, 579; Gibbon *v.* Railroad Co., 36 Ala. 410; Foote *v.* Salem, 14 Allen, 487; Dunnovan *v.* Green, 57 Ill. 63.

[4] York *v.* Forscht, 23 Pa. St. 391 (1854); Crawshaw *v.* Roxbury, 7 Gray, 374 (1856). An offer of a reward is revocable at any time before its terms have been complied with, and may be revoked in the same manner in which it was made, yet it is immaterial that the claimant of the reward was ignorant of its withdrawal. Shuey *v.* United States, 92 U. S. 73 (1875). Such an offer is not void for ambiguity, and entitles a person to the reward who gives information to the police officers of the city upon which the incendiary is arrested, he being afterwards convicted.

[5] The power of towns in *Maine* to offer rewards denied. Gale *v.* South Berwick, 51 Me. 174. See Lee *v.* Fleminsburg, 7 Dana, 59, and Loveland *v.* Detroit, 41 Mich. 367. In *Iowa* it is held that "in the *absence of express statutory authority a city has no power to offer a reward* for the apprehension of criminals, such power not being included in the general authority given to the city council to pass ordinances for the preservation of peace and good order in the city." Hawk *v.* Marion Co., 48 Iowa, 472; Hanger *v.* Des Moines, 52 Iowa, 193; s. c. 9 C. L. J. 478. So in *Kentucky*. Patton *v.* Stephens, 14 Bush (Ky.), 324, where the court says, "The power to pass all needful by-laws and ordinances for the due and effectual administration of justice in said city," and to "legislate upon all subjects which the good government of said city shall require," does not authorize an appropriation of money to *enforce laws of the Commonwealth*, wherein every other community thereof has the same interest. In *New Hampshire* the power to offer rewards for offenders is conferred upon towns by statute. It is there held that, under the statute, a reward cannot be claimed for services rendered before it is offered. Abel *v.* Pembroke, 61 N. H. 357. The Constitution of *Florida* authorizes the imposition of taxes for "corporation purposes and for *no other purpose*," and the courts there hold that cities are not liable to pay rewards offered for the detection and punishment of criminals. Murphy *v.* Jacksonville, 18 Fla. 318. A county in *Indiana* has no such power. Board of Commissioners *v.* Bradford, 72 Ind. 455.

city which has such power, it may be ratified by the city council subsequently, and is binding upon the city, though not so ratified until after the performance of the service for which the reward is claimed.[1] A promise *to reward an officer* for doing that which, without such reward, it was his duty to do, is void. Such a promise is, on general principles, *without consideration*, if, indeed, it be not illegal.[2] Therefore, a watchman of a city, who, while in the discharge of his duty as such, discovers a person in the act of committing a crime, cannot recover from the city a reward offered by it.[3]

§ 140 (92). **Public Buildings.** — Power to the officers, or to one of the departments of a municipal corporation, *to provide for repairs to public buildings*, does not give authority to *erect a new building*,

[1] Crawshaw *v.* Roxbury, *supra*. Under a statute authorizing the mayor and city council of any city, or the selectmen of any town, to offer and pay from the treasury of such city or town a suitable reward, not exceeding $300, for apprehending and securing a person charged with a capital or other high crime, any city or town may be bound by an offer of a reward in such cases; and any person who performs the service, relying upon such offer, may, in action of *assumpsit*, recover the amount offered of such city or town. Janvrin *v.* Exeter, 48 N. H. 83. If two persons jointly perform the service they must be joined as plaintiffs. *Ib.* Requisites of declaration where reward is offered by a town, see Codding *v.* Mansfield, 7 Gray, 272. In order to recover the reward *the plaintiff must in general prove performance according to the terms of the advertisement.* See Neville *v.* Kelly, 12 C. B. N. S. 740; Smith *v.* Moore, 1 C. B. 438; Thatcher *v.* England, 3 C. B. 254; England *v.* Davidson, 11 A. & E. 856; Lancaster *v.* Walsh, 4 M. & W. 16; Fallick *v.* Barber, 1 M. & S. 108; Williams *v.* Carwardine, 4 B. & Ad. 621; Tarner *v.* Walker, L. R. 1 Q. B. 641; s. c. L. R. 2 Q. B. 301.

[2] Stotesbury *v.* Smith, 2 Burr. 924; Harris *v.* Watson, Peake, 72; 3 Kent Com. 185; Stilk *v.* Myrick, 2 Campb. 317; Bridge *v.* Cage, Cro. Jac. 103. See chapter on Corporate Officers, *post*, secs. 233, 234.

[3] Pool *v.* Boston, 5 Cush. 219 (1849); Gilmore *v.* Lewis, 12 Ohio, 281; Means *v.* Hendershott, 24 Iowa, 78; chap. ix. *post.*

and certainly not a large and expensive edifice.[1] But power to a municipal corporation to build or repair carries with it the right to determine plan and mode.[2]

[1] Peterson *v.* Mayor, &c., 17 N. Y. 449, 455, *per Denio*, J. Contract between city and county in respect to public buildings. Bergen *v.* Clarkson, 1 Halst. (N. J.) 352 (1796); De Witt *v.* San Francisco, 2 Cal. 289 (1852). In *Georgia* it has been held that the power to build a school-house is within the scope of the general power of a municipal corporation in that State, without express authority, unless the charter forbids. Cartersville *v.* Baker, 73 Ga. 686.

[2] Ely *v.* Rochester, 26 Barb. 133; Bell *v.* Platteville, 71 Wis. 139. An unrestricted power to purchase real estate for the erection of public buildings held to give, by implication, the exclusive right to the City Council to determine the expediency of purchasing, the power to purchase on credit and to issue bonds for the purchase money. Richmond *v.* McGirr, 78 Ind. 192 (1881); *ante*, secs. 119, 124, 125. As to power to build *town-house*. French *v.* Quincy, 3 Allen, 9. Incidental power to provide suitable accommodations for the transaction of the business of the corporation. People *v.* Harris, 4 Cal. 9; see Vanover *v.* Davis, 27 Ga. 354; chapter on Corporate Property, *post*. In Callam *v.* Saginaw, 50 Mich. 7, a taxpayer filed a bill for an injunction to restrain the issue of bonds of the city of Saginaw to pay for the *erection of a court-house* for the *county at the sole expense of a city, under an act authorizing such action*. The court, *Campbell*, J., said: "It is claimed, and is true, that the legislature *cannot compel a city to bear the whole expense of county buildings* (see *ante*, secs. 72, 73). . . . The question therefore arises whether *a city can be authorized* to raise by corporate funds and taxes the entire money required for a court-house for the county. . . . No precedents have been found precisely analogous. The power is rested by the defence on the validity of city expenditures for purposes of a public character which make a city more desirable as a residence, promote its improvement and the increase of its taxable property, and add to the comforts or prosperity of its inhabitants. . . . There is no lack of authority for allowing municipal corporations to aid, or in some cases to establish, improvements which are not purely for municipal purposes. . . . It is also very common both in this country and in England, from which we have drawn the principles of our common law, for cities, in building their municipal buildings, to furnish accommodations, gratuitously or otherwise, for public officers and bodies which do not represent the city. . . . The question whether the city of Saginaw, which must, at the present ratio of taxation, bear about one-fifth of the expense of a court-house, may be authorized to raise money enough to build the whole of it, does not therefore seem to be so much whether it can raise anything more than its ratable proportion for what is not strictly a municipal purpose, but how much it can raise without violating principle. It seems to us that if the door can be opened at all, this is not a matter for the courts to decide. The legislature cannot compel a city to be generous to the State or county; but we do not think the Constitution forbids a city — if authorized by statute — from determining for itself whether such an investment of city money for purposes in which the city is directly concerned in part, will not be wise and profitable. If it may put up handsome instead of mean buildings for its own uses, and may accommodate the county in those buildings upon as easy terms as it chooses, we do not see that what is now proposed involves substantially any very different principle." The action of the court below in dismissing the bill was, however, reversed on other grounds.

Council have power to fit up and furnish the room in which they meet, and the court refused to enjoin them from furnishing the council chamber with portraits of the governors of the State. Reynolds *v.* Mayor of Albany, 8 Barb. 597; People *v.* Harris, 4 Cal. 9; but see Hodges *v.* Buffalo, 2 Denio, 110; Stetson *v.* Kempton, 13 Mass. 272 (1816), *per Parker*, C. J. *Proper uses* of public buildings. Scofield *v.* School District, 27 Conn. 499; French *v.* Quincy, 3 Allen, 9. *Market Houses*, *post*, secs. 380–385, 562, 648. Equity will not interfere to prevent the erection of suitable public buildings unless the provisions of the charter forbid. Torrent *v.* Muskegon, 47 Mich. 115.

In organizing *a county* the legislature may delegate the authority to locate the *county seat* to the county commissioners. Rice *v.* Shuey, 5 N. W. R. 435. But the county seat cannot be changed at the will of the county board after they have canvassed the vote and located it in accordance with the result. People *v.* Benzie Co., 41 Mich. 6; Attorney-General *v.* Lake Co., 33 Mich. 289; Attorney-General *v.* Benzie, 34 Mich. 211.

§ 141 (93). **Police Powers and Regulations.** — Many of the powers exercised by municipalities fall within what is known as the *police power* of the State,[1] and are delegated to them to be exercised for the public good. Of this nature is the authority to suppress nuisances, preserve health, prevent fires, to regulate the

[1] *Ante*, chap. iv. The power of a corporation to exercise *police jurisdiction* is a power delegated by the State. Cranston *v.* Augusta, 61 Ga. 572. The police power of a State is not impaired by the Fourteenth Amendment to the Constitution of the United States. Barbier *v.* Connolly, 113 U. S. 27 (1885). Ordinance of San Francisco prohibiting washing and ironing in public laundries within a specified district, from ten o'clock at night to six in the morning held valid under the police power. S. P. Soon Hing *v.* Crowley, 113 U. S. 703 (1885). See full discussion in New Orleans Gas Co. *v.* Lousiana Light Co., 115 U. S. 650, 661 (1885); Butchers' Union Co. *v.* Crescent City, &c. Co., 111 U. S. 746 (1883) (Slaughter-house case).

An act prohibiting the *manufacture and sale of oleomargarine* or keeping the same with intent to sell, is valid as a legitimate exercise of the police power of the State, and is not in conflict with the Fourteenth Amendment of the Federal Constitution. Powell *v.* Commonwealth, 114 Pa. St. 265 (1886). Affirmed by Supreme Court of the United States, 127 U. S. 678 (1888); S. P. State *v.* Addington, 77 Mo. 110 (1882). *Contra:* People *v.* Marx, 99 N. Y. 377. See, also, Matter of Jacobs, 98 N. Y. 98 (1885) (prohibiting manufacture of cigars in tenement houses); and the views of Mr. Justice *Field* in Munn *v.* Illinois, 94 U. S. 113, 142 (1876), and in Powell *v.* Pennsylvania, 127 U. S. 687. We cannot refrain from expressing our full concurrence in the views and conclusions of the Court of Appeals of New York in The People *v.* Marx, *supra*. It will not escape observation that the Court of Appeals of New York and the Supreme Court of Pennsylvania reached opposite conclusions on a question relating so vitally to the natural, inalienable, and primordial rights of the citizen. The judgment of the Supreme Court of Pennsylvania sustaining the Act of 1885, was affirmed by the Supreme Court of the United States; and on like grounds, if the New York statute (which was in judgment in the case of The People *v.* Marx) had been before the Supreme Court of the United States, its validity would have been upheld, unless the Supreme Court had followed the judgment of the Court of Appeals. We have, at all events, that which is regarded as a fundamental right in New York considered not to be such in Pennsylvania. The Pennsylvania Act of 1885, under which Powell was convicted, makes the manufacture and sale of oleomargarine, though open and unconcealed, a crime. We cannot but express our regret that the Constitution of any of the States, or that of the United States, admits of a construction that it is competent for a State legislature to suppress (instead of regulating) under fine and imprisonment the business of manufacturing and selling a harmless, and even wholesome, article, if the legislature chooses to affirm, contrary to the fact, that the public health or public policy requires such suppression. The record of the conviction of Powell for selling without any deception a healthful and nutritious article of food makes one's blood tingle.

use and storing of dangerous articles, to establish and control markets, and the like. These and other similar topics will be considered in appropriate places. But it may here be observed that every citizen holds his property subject to the proper exercise of this power, either by the State legislature directly, or by public or municipal corporations to which the legislature may delegate it.[1] Laws and ordinances relating to the comfort, health, convenience, good order, and general welfare of the inhabitants are comprehensively styled, "Police Laws or Regulations." It is well settled that laws and regulations of this character, though they may disturb the enjoyment of individual rights, are not unconstitutional, though no provision is made for compensation for such disturbances. They do not appropriate private property for public use, but simply regulate its use and enjoyment by the owner. If he suffers injury, it is either *damnum absque injuria*, or, in the theory of the law, he is compensated for it by sharing in the general benefits which the regulations are intended and calculated to secure. The citizen owns his property absolutely, it is true; it cannot be taken from him for any private use whatever, without his consent, nor can it be taken for any public use without compensation; still he owns it subject to this restriction, namely, that it must be so used as not unreasonably to injure others, and that the sovereign authority may, by police regulations, so direct the use of it that it shall not prove pernicious to his neighbors, or the citizens generally. These regulations rest upon the maxim, *Salus populi suprema est lex.* This power to restrain a private injurious use of property, is essentially different from the right of eminent domain. It is not a taking of private property for public use, but a salutary restraint on a noxious use by the owner, contrary to the maxim, *Sic utere tuo ut alienum non lædas.*[2]

[1] McKibbin *v.* Fort Smith, 35 Ark. 352; Textor *v.* Baltimore & O. R. R. Co., 59 Md. 63 (gates at railroad crossings).

[2] Baker *v.* Boston, 12 Pick. 184 (1831) (as to nuisances); Wadleigh *v.* Gillman, 12 Me. 403 (as to wooden buildings); Vanderbilt *v.* Adams, 7 Cow. 349 (as to harbor regulations, where the general principle upon which police laws rest is very satisfactorily discussed by *Woodworth*, J.); Commonwealth *v.* Alger, 7 Cush. 53, 84 (valuable opinion by *Shaw*, C. J.); Fisher *v.* McGirr, 1 Gray, 1; Commonwealth *v.* Tewksbury, 11 Met. 55; Salem *v.* Eastern Railroad, 98 Mass. 431; Watertown *v.* Mayo, 109 Mass. 315; Dingley *v.* Boston, 100 Mass. 544; Cobb *v.* Boston, 112 Mass. 181; Bancroft *v.* Cambridge, 126 Mass. 438; Welch *v.* Boston, 126 Mass. 442; Little Rock *v.* Barton, 33 Ark. 436, citing and approving text. Hollingsworth *v.* Parish of Tensas, 17 Fed. Rep. 109; Coates *v.* Mayor, &c. of New York, 7 Cow. 585 (1826) (as to ordinance prohibiting the interment of the dead within the city); Goszler *v.* Georgetown, 6 Wheat. 593 (as to power to grade).

The power to regulate the *keeping of dogs* and to enforce such regulations by forfeitures, fines, and penalties is recognized as one within the police power. City of Faribault *v.* Wilson, 34 Minn. 254.

§ 142. **Subject to Federal Constitution.** — All-embracing and penetrating as the police power of the State is, and of necessity must be, *it is nevertheless subject, like all other legislative powers, to the*

The legislature may, it seems, pass an act *limiting the height of dwelling-houses* in cities. The New York act of 1885 construed not to extend to buildings designed for hotels. People *v.* D'Oench, 111 N. Y. 359 (1888).

In the case of the Boston Beer Co. *v.* Massachusetts, 97 U. S. 25 (1877), Mr. Justice *Bradley*, speaking for the court, said: "Whatever differences of opinion may exist as to *the extent and boundaries of the police power*, and however difficult it may be to render a satisfactory definition of it, there seems to be no doubt that it does extend to the protection of the lives, health, and property of the citizens, and to the preservation of good order and the public morals." See also New Orleans Gas Co. *v.* Louisiana Light Co. 115 U. S. 650, 661 (1885). *Prohibitory liquor laws valid.* Bartemeyer *v.* Iowa, 18 Wall. 129 (1873); Foster *v.* Kansas, 112 U. S. 201 (1884); Kidd *v.* Pearson, 128 U. S. 1 (1888); Mugler *v.* Kansas, 123 U. S. 623 (1887); Bowman *v.* Railway Co., 125 U. S. 465 (1888), sustaining a statute of a State prohibiting common carriers from bringing intoxicating liquors into the State without first having a certificate from the county auditor that the consignee is authorized to sell in the county. See also Fertilizing Co. *v.* Hyde Park (village of), 97 U. S. 659 (1878). In the last case Mr. Justice *Swayne* says: "Perhaps the most striking application of the police power is in the destruction of buildings to prevent the spread of a conflagration. This right existed by the common law, and the owner was entitled to no compensation. 2 Kent's Com. 339 (marg. paging), and notes 1 and *a* and *b*." *Post*, chap. xxiii.

It is within the police power of the State to authorize the *channel of a river* to be turned or straightened, in order to protect from threatened inundation a populous portion of the State; and such work is of a public character. Green *v.* Swift, 47 Cal. 536 (1874). In such case, the authority of the State is none the less in degree, even if the inhabitants of the district to be protected did not constitute a body politic. *Ib.* A power "to make and establish rules for the regulation of jut or bay windows" does not authorize the council to pass an ordinance granting permission to *an individual* to construct a bay window projecting beyond the building line. Reimer's Appeal, 100 Pa. St. 182. See *post*, secs. 660, 734.

Speaking of *turnpike acts, paving acts*, &c., Lord *Kenyon*, in the case of the Governor &c. *v.* Meredith, 4 Term Rep. 790, 796, says: "Some individuals suffer an inconvenience under all these acts of parliament; but the interests of individuals must give way to the accommodation of the public." And *per Buller*, J., in the same case: "There are many cases in which individuals sustain an injury, for which the law gives no action; for instance, pulling down houses, or raising bulwarks, for the preservation and defence of the kingdom against the king's enemies." But "the law will not allow the right of property to be invaded under the *guise of a police regulation* for the preservation of health, when it is manifest that such is not the object and purpose of the regulation." *Per Wilde*, J., in Austin *v.* Murray, 16 Pick. 126; Green *v.* Savannah, 6 Ga. 1 (1849); People *v.* Hawley, 3 Mich. 330; Ames *v.* P. H. L. Co., 11 Mich. 139. The extent of the police power will be further discussed in the chapter on Ordinances, *post*. See also Cooley, Const. Lim. 572–594. How far and when cities, in executing police duties, are *agents of the State*, and not of the municipality. See Buttrick *v.* Lowell, 1 Allen (Mass.), 172; Mitchell *v.* Rockland, 51 Me. 118, 122; 52 Me. 118; Brown *v.* Vinalhaven, 65 Me. 402 (1876); Keller *v.* Corpus Christi, 50 Tex. 614, approving text; State *v.* St. Louis Court, 34 Mo. 546; White *v.* Kent, 11 Ohio St. 550; Thomas *v.* Ashland, 12 Ohio St. 127; City Council *v.* Payne, 2 Nott & McCord (S. C.), 475; People *v.* Hurlbut, 24 Mich. 44 (1871); s. c. 9 Am. Rep. 103; *ante*, sec. 60; *post*, secs. 253, 393, 396, 768.

paramount authority of the State and Federal Constitutions. A right conferred or protected by the Constitution cannot be overthrown or impaired by any authority derived from the police power. Thus the police power of the State must be exercised in subordination to the Federal Constitution, and, as was held by the Supreme Court of the United States, in respect of State laws forbidding the *transportation of Texas cattle*, it cannot extend to *interstate* transportation of the subjects of commerce.[1] In a subsequent case[2] the rights claimed by a private corporation, chartered by an act of the legislature, and authorized by its charter to establish and carry on a business which was intrinsically and unavoidably a nuisance to the inhabitants in the neighborhood,[3] came in conflict with the police power of the State, subsequently delegated to a municipality within whose limits the offensive and unhealthy business of the private corporation was conducted. The subject was thoroughly considered. The court did not deny that by a specific contract the legislature might surrender for a limited period the right to interfere with a business which was a positive nuisance. On the ground, however, that the private corporation, when its charter was tested by the principles of strict construction applicable to such grants,[4] had no specific legislative authority to maintain its works

[1] Railroad Co. *v.* Husen, 95 U. S. 465 (1877). In Kimmish *v.* Ball, 129 U. S. 217 (1889), an Iowa statute making persons having "Texas cattle" in their possession which have not been wintered north of a certain point, liable for damages which may accrue from allowing them to run at large, and thereby spread "Texas fever," was sustained.

[2] Fertilizing Co. *v.* Hyde Park (village of), 97 U. S. 659 (1878).

[3] The Fertilizing Company obtained by its charter from the State (which was a legislative contract), for the period of fifty years, three rights, among others; first, a right to establish and maintain at a place in Cook County, south of the dividing-line between townships thirty-seven and thirty-eight, works for converting offal and animal matter; and the works had been established there at a cost of more than two hundred thousand dollars; second, they obtained the right to establish receiving depots for receiving and carrying such matter from Chicago; and third, they obtained the right to carry such matter from their receiving depots to their converting works in Hyde Park. Under legislative authority subsequently conferred upon it the municipality of Hyde Park passed an ordinance absolutely prohibiting the transportation of offal through the village. The majority opinion sustaining the ordinance is based upon two propositions: 1. That the chartered rights of the Fertilizing Company were subject to the police power of the State, which was delegated to the municipal authorities. 2. The charter of the company is not a contract guaranteeing *in the locality originally selected*, exemption for fifty years from the exercise of the police power of the State, however serious the nuisance might become in the future, by reason of the growth of population around it. Mr. Justice *Miller* limited his judgment to a concurrence on the second point, and denied the first. *Strong*, J., dissented. *Field*, J., did not sit. Critically viewed, the case is perhaps only an authoritative decision on the second ground, since it is relied on in both concurring opinions, and is amply sufficient to sustain the judgment, which affirmed that of the Supreme Court of Illinois

[4] *Ante*, secs. 89–91, and cases.

on the site where they were established, if not, indeed, on the broader ground that all legislative charters to private corporations are subordinate to the police power in all cases whatsoever, or, at all events, in all cases except where it is otherwise provided by the express terms of the contract, or by what is necessarily implied, *the municipal ordinances to abate the nuisance were sustained*, although the corporation had erected expensive works, and the effect of enforcing the ordinance would be to prevent the further carrying on of the business in that locality. Similar results in favor of the police power as against alleged vested rights under charters have been reached in other cases.[1]

[1] Coates *v.* Mayor, &c. of New York, 7 Cow. 585 (1826), referred to in the case of the Fertilizing Co. *v.* Hyde Park, *supra*, and thus stated by *Swayne*, J.: In Coates *v.* The Mayor, &c. of New York, 7 Cow. 585, a law was enacted by the legislature of the State, on the 9th of March, 1813, which *gave to the city government power* to pass ordinances regulating, and if necessary preventing, the *interment of dead bodies within the city;* and a penalty of $250 was authorized to be imposed for the violation of the prohibition. On the seventh of October, 1823, an ordinance was adopted forbidding interments or the depositing of dead bodies in vaults in the city south of a designated line. A penalty was prescribed for its violation. The action was brought to recover the penalty for depositing a dead body in a vault in Trinity church-yard. A plea was interposed setting forth that the *locus in quo* was granted by the King of Great Britain on the 6th of May, 1697, to a corporation by the name of the "Rector and Inhabitants of the City of New York in Communion with the Protestant Episcopal Church of England," and their successors forever, as, and for a church-yard and burying place, with the rights, fees, &c.; that immediately after the grant the land was appropriated and thenceforward was used as and for a cemetery for the interment of dead bodies; that the rector and wardens of Trinity Church were the same corporation, and that the body in question was deposited in the vault in the church-yard by the license of that corporation. A general demurrer was filed, and the case was elaborately argued. The validity of the ordinance was sustained. The court held that "the act under which it was passed was not unconstitutional, either as impairing the obligation of contracts, or taking property for public use without compensation, but stands on the police power to make regulations in respect to nuisances." It was said: "Every right, from absolute ownership in property down to a mere easement, is purchased and holden subject to the restriction that it shall be so exercised as not to injure others. Though at the time it be remote and inoffensive, the purchaser is bound to know at his peril that it may become otherwise by the residence of many people in its vicinity, and that it must yield to by-laws and other regular remedies for the suppression of nuisances." In such cases prescription, whatever the length of time, has no application. Every day's continuance is a new offence, and it is no justification that the party complaining came voluntarily within its reach. Pure air and the comfortable enjoyment of property are as much rights belonging to it as the right of possession and occupancy. If population, where there was none before, approaches a nuisance, it is the duty of those liable at once to put an end to it. Brady *v.* Weeks, 3 Barb. (N. Y.) 157. *Post*, sec. 372. Cemetery associations and their franchises are subject to regulation under the police power. Cemetery Ass. *v.* Railroad Co., 121 Ill. 199 (1887). So where a *city had conveyed land to individuals for the purpose of erecting powder magazines thereon*, and afterwards passed an ordinance declaring the magazines so erected dangerous to life and property, and direct-