below referred to will show) has been relaxed, and in some instances deemed to be wholly inapplicable.[1]

[1] With respect to persons or officers appointed by law to act *judicially* in a *public* matter, it is generally held, there being no provision of statute to the contrary, that where *all meet* and act, *a majority* may decide and bind the rest, and this notwithstanding the express dissent of the minority, or their wrongful withdrawal before the act is consummated. Rogers, *In re*, 7 Cow. (N. Y.) 526 (1827) (appraisal of damages by canal appraisers), and see *Ib.* note *a*, and the cases there cited and reviewed; *Ib.* 764, explanation. See, further, Willcocks, *In re*, 7 Cow. (N. Y.) 402, and note; *Ib.* 462, 463; Young *v.* Buckingham, 5 Ohio, 485, 489 (1832); Charles *v.* Hoboken, 3 Dutch. (N. J.) 203; Martin *v.* Lemon, 26 Conn. 192 (1857); Astor *v.* New York, 62 N. Y. 567, 580 (1875); People *v.* Palmer (effect of death of one of the members or officers), 52 N. Y. 83; People *v.* Syracuse, 63 N. Y. 291; *ante*, sec. 99, note; *post*, chap. xxiii.

The statute authorized the appointment of three levee inspectors, and prescribed their duties, which involved the exercise of judgment. *Held*, that all must meet and act, and that the action of a majority in the absence of the third was void. Ballard *v.* Davis, 31 Miss. 525 (1856).

Where a *majority of a committee* is authorized to act, they constitute a party capable of contracting; and another member of a committee, not acting as such, but as an individual, constitutes another party capable of being contracted with. It is accordingly held that a *majority* of such a committee may contract with or employ *one of their own number*, and such contract, if fairly made and without fraud or corruption, will be binding upon the corporation. Junkins *v.* Union School District, 39 Me. 220; Buell *v.* Buckingham, 16 Iowa, 284; *post*, sec. 443, note; *post*, sec. 292; Willard *v.* Newburyport, 12 Pick. (Mass.) 227. Compare Smith *v.* Albany, 61 N. Y. 444 (1875). But a contract made by less than a majority of a committee of the corporation, though in the name of the whole, binds *neither* party. *Post*, sec. 452. But it will be binding if the authority was joint and several, or if ratified. Adams *v.* Hill, 16 Me. (4 Shep.) 215 (1839); Kupfer *v.* South Parish, &c., 12 Mass. 185 (1815); Allen *v.* Cooper, 22 Me. 133 (1842). In Damon *v.* Granby, 2 Pick. (Mass.) 345 (1842), this distinction is taken. If a public corporation appoints a committee of its *own members*, a majority may bind, for such is the usage and the common law in relation to corporations. But if the authority is given to persons not members of the body, such persons are agents, and not technically a committee, and all must concur, unless it appear that it was intended that a majority should act. See authorities cited by Solicitor-General Davis in same case, p. 350; Viner's Ab. title *Authority*, B. pl. 7. Further as to binding force of the act of majority of a committee or board of selectmen, see Jones *v.* Andover, 9 Pick. (Mass.) 146; Crommett *v.* Pearson, 18 Me. (6 Shep.) 344 (1841); Junkins *v.* School District, 39 Me. 220 (1855); Inhabitants, &c. *v.* Cole, 3 Pick. (Mass.) 232, 244; Kingsbury *v.* School District, 12 Met. (Mass.) 99 (1846); Keyes *v.* Westford, 17 Pick. (Mass.) 273 (1835); Green *v.* Miller, 6 Johns. (N. Y.) 39 (1810); Grindley *v.* Barker, 1 Bos. & Pul. 236, *per Eyre*, C. J.; King *v.* Beeston, 3 Term R. 592; Guthrie *v.* Armstrong, 5 Barn. & Ald. 628 (1822), where it was held that a power given to fifteen jointly and severally was well executed by four. A school committee appointed according to and under a statute are public officers within the meaning of the statute which gives a majority of such officers authority to act for the whole. Keyser *v.* School District, 35 N. H. 477 (1857). Where an authority is given, by law, *to a committee*, or to more persons than one, to do an act of a public nature, one alone, unless there be something to show such intention, cannot act independently and without the concurrence of the others, or at least of a majority. If the act is *ministerial*, a majority at least must concur: but unless required, or such is the practice, *they need not act as a board*, and be convened or notified to be convened as such. But if the act is *judicial* in its nature, that is, requiring the exercise of judgment, unless special provision is otherwise made, all must meet or have notice to meet, a majority will constitute a quorum, and a majority of the quorum will be competent to act. Martin *v.* Lemon, 26 Conn. 192 (1857). In this case it was ruled that one of a committee of three to remove encroachments on highways could not act alone. *Committees of public corporations* have sometimes been held to be governed, with respect to meeting and notice, by different rules from a board which has necessarily to be assembled or convened before it can act. And the acts of a majority of such committees have been considered valid, though some member of the committee was not notified. Gallup *v.* Tracy (town committee to stake out oyster grounds), 25 Conn. 10 (1856). But compare Martin *v.* Lemon, 26 Conn. 192. And see Damon *v.* Granby, 2 Pick. (Mass.) 345, 354; Grindley *v.* Barker, 1 Bos. & Pul. 229; Keeler *v.* Frost, 22 Barb. (N. Y.) 400; Perry *v.* Tynen, 22 Barb. (N. Y.) 137. Town committee held to be an agent of the town, and not a board of public officers or a judicial body, *and may act by the agreement of the individual members separately obtained.* Shea *v.* Milford, 145 Mass. 528 (1888); Haven *v.* Lowell, 5 Met. (Mass.) 35. Where a public authority is to be exercised by two officers — a number not admitting of a majority — regularly, both should act; yet, to prevent a failure of justice, it seems one may, in certain cases, as where the other is dead, disqualified, or absent, act alone. But certain it is, that where one only acts, the *consent of the other will be presumed.* This is an application of the strong presumption which obtains in favor of the performance of official duty. Downing *v.* Rugar, 21 Wend. (N. Y.) 178 (1839), and authorities cited. This case also holds that the presumption of consent should be rebutted only by the testimony of the *other* officer. *Ib.* 185. "It is a general principle that where a board of officers (for example, overseers of the poor) is constituted to perform a duty provided by law, the act of the majority is the act of the whole body." *Per Bennett*, J., Walcott *v.* Walcott, 19 Vt. 37, 39 (1846). See, also, King *v.* Beesten, 3 Term R. 592; Jones *v.* Andover, 9 Pick. (Mass.) 146.

Under the statutes of Pennsylvania, all powers conferred upon county commissioners may be legally executed by two without the concurrence of the third. Commissioners *v.* Leckey, 6 Serg. & Rawle (Pa.), 166; Cooper *v.* Lampeter, 8 Watts (Pa.), 128; Curtis *v.* Butler Co., 24 How. 435; Jefferson Co. *v.* Slagle, 66 Pa. St. 202, where it is held that a contract by two county commissioners within the scope of their authority bound the county, although not made at their office.

Where three commissioners are appointed to contract for site for poor-house, two of them cannot make a valid purchase. Pulaski Co. *v.* Lincoln, 4 Eng. (9 Ark.) 320 (1849). Action of less than a majority of commissioners of public buildings, appointed by act of legislature, is void. Petrie *v.* Doe, 30 Miss. 698 (1856). A statute declaring that every board of township trustees, "and the *members* thereof," shall be overseers of the poor was construed to make *each* member an overseer, with power to act. County Commisssoners *v.* Jones, 7 Ind. 3, 5 (1855).

When majority may lawfully execute powers of a public nature. Commissioners *v.* Leckey, 6 Serg. & Rawle (Pa.), 170; Baltimore Turnpike, 5 Binn. (Pa.) 484; McCready *v.* Guardians, 9 Serg. & Rawle (Pa.), 99; Commonwealth *v.* Commissioners, 9 Watts (Pa.), 466, 471; Cooper *v.* Lampeter, 8 Watts (Pa.), 128; Caldwell *v.* Harrison, 11 Ala. 755; Commissioners *v.* Tarver, 21 Ala. 661; Crist *v.* Town Trustees, 10 Ind. 462; Somerset *v.* Parson, 105 Pa. St. 360; Schenck *v.* Peay, 1 Dillon C. C. R. 267.

§ 284 (222). **Application of Majority Principle to Joint Assemblies.** — The doctrine of the English courts is, that *all of the integral parts* of a corporation necessary to do an act must not only meet, but

remain present till the act is completed; and therefore if one of such parts deserts or withdraws, though wrongfully and to defeat any action, before the act is consummated, the act is not valid.[1] The liability of this rule to abuse, since it enables one of the parts of a joint meeting or assembly to defeat any action whatever, has led the courts in this country to deny its applicability here, or to apply it with caution.[2]

[1] King *v.* Williams, 2 Maule & Sel. 141; following King *v.* Buller, 8 East, 389; questioning King *v.* Norris, 1 Barnard. K. B. 385; cited and reviewed, 7 Cow. 526, note; King *v.* Miller, 6 Term R. 278; 2 Kent's Com. 292. Mr. Willcock vindicates the rule, but on grounds not very satisfactory. Corp. 53, 54. *Supra*, sec. 271.

[2] Humphrey, *In re*, 10 Wend. N. Y. 612 (1834); People *v.* Batchelor, 22 N. Y. 128, 146; *per Denio*, J.; First Parish *v.* Stearns, 21 Pick. (Mass.) 148 (1838); Coles Co. *v.* Allison, 23 Ill. 437. *Ante*, sec. 271.

The common-law rule, that to the *due constitution of a corporate assembly a majority*, at least, of each integral or component part or body must necessarily be present, was departed from by the Supreme Court of *New Hampshire* in the case of Beck *v.* Hanscom. By the charter, the city government of Portsmouth was vested in a mayor, "one council of seven, to be denominated the board of aldermen, and one council of twenty-one, to be denominated the common council, which boards should, in their joint capacity, be denominated the city council." It was further provided by the charter that a "majority of each board shall constitute a quorum;" that the two bodies shall sit and act separately, except "when the two are required to meet in convention;" that at the meeting of the "city council in convention, if it shall appear that a majority of either of said bodies is not present," the members may compel the attendance of the absentees, &c. The board of aldermen and the common council separately voted to meet in convention on the 12th of June, for the choice of city officers; but when the time arrived, only a minority (three out of seven) of the board of aldermen appeared. The common council and these aldermen, twenty-three in all, being a majority of both boards, proceeded to elect city officers; and it was held, 1st, that the election was valid; and 2d, that a majority of the twenty-three present could elect. In reference to this decision it may be observed that the court take no notice of the power of compelling the attendance of the absentees, and that this provision seemed to contemplate the presence of a majority of *each* of the constituent bodies. The court cite and approve Whiteside *v.* People, 26 Wend. 634, and Humphrey, *In re*, 10 Wend. 612; in both of which, however, the constituent bodies, so to call them, duly met, but refused to act. It is substantially admitted by the court that the decision they make is not in conformity with the English rule, but they consider it to be the one "which will best enable the government of the city to proceed with regularity;" and that "after every preliminary step has been properly taken, the mere neglect of one of the constituent bodies to carry its previous vote into effect ought not to hinder the other bodies from performing the duties required by the charter." *Per Gilchrist*, C. J., in Beck *v.* Hanscom, *supra*, 9 Fost. (29 N. H.) 213, 226. In Kimball *v.* Marshall, 44 N. H. 465 (1863), Bell *v.* Hanscom, *supra*, is approved, and its doctrine applied to a different state of facts.

Effect of refusal of *one of two distinct bodies* to go into a *joint* meeting, or, after being assembled in joint meeting, to participate in "the *joint* ballot" by which officers (by statute) are to be removed or appointed, see, in Court of Errors, Whitside *v.* The People, 26 Wend. (N. Y.) 634 (1841), reversing decision of Supreme Court in same case, 23 Wend. 9. See Act of Congress of July 25, 1866 (14 Statutes at Large, 243), regulating the election of United States senators by the legislatures of the several States in *joint assembly*, containing provisions (the necessity for which has been shown by experience) to prevent one of the bodies from defeating action.

§ 285 (223). **Stated and Special Meetings; Power to adjourn; Notice.** — The usual division of the *meetings of corporate bodies* is into (1) *stated* or *regular*, and (2) *special* meetings; and meetings of either class possess an incidental power of *adjournment*, from whence we have another class known as *adjourned meetings*. The *time of holding regular or stated meetings* is fixed by the charter, or by ordinance or by-law passed in pursuance thereof; and, in either case, the time thus appointed is presumed to be known to the members of the body; and unless the charter or by-law otherwise provides, it is their duty to attend such meetings without further or special notice. Absent members, equally with those who are present, are bound by whatever is lawfully done at a regular or stated meeting, or any regular and valid adjourned meeting.[1]

§ 286 (224). **Notice of Special Meetings; how given.** — If the *meeting be a special* one, the general rule is, unless modified by the charter or statute, that *notice* is necessary, and must be personally served, if practicable, upon *every member* entitled to be present, so that each one may be afforded an opportunity to participate and vote.[2] By the charter of a city, the power of imposing taxes

[1] People *v.* Batchelor, 22 N. Y. 128 (1860); Smith *v.* Law, 21 N. Y. 296; *ante*, secs. 277, 278; State *v.* Smith (presumptions of regularity), 22 Minn. 218 (1875); *ante*, secs. 266, note, 269; *post*, secs. 286, note, 287, note, as to presumption of regularity; Hudson Co. *v.* State (presumptions of regularity), 4 Zabr. (24 N. J. L.) 718; Insurance Co. *v.* Sanders, 36 N. H. 252. See and compare State *v.* Jersey City, 1 Dutch. (N. J.) 309. If the charter does not provide for the manner in which the time for holding "stated meetings" shall be fixed, the city council may fix or change the time by simple motion, though it has previously been fixed by a formal resolution, approved and published. State *v.* Kantler, 33 Minn. 69.

[2] People *v.* Batchelor, 22 N. Y. 128, 134, *per Selden*, J.; *Ib.* 146, *per Denio*, J.; Rogers, *In re*, 7 Cow. (N. Y.) 526, and cases cited in valuable note; Downing *v.* Rugar, 21 Wend. (N. Y.) 178; Burgess *v.* Pue, 2 Gill (Md.), 254; Stow *v.* Wyse, 7 Conn. 214; Harding *v.* Vandewater, 40 Cal. 77; Smyth *v.* Darley, 2 House Lords Cases, 789 (1849). A charter provision that the council shall meet at such time and place as they may by resolution direct does not preclude other meetings than those fixed by such resolution, and such other meetings are valid if all the members actually attend and participate in the proceedings, and they are otherwise regular. State *v.* Smith, 22 Minn. 218. *Presumption* that all members were present and acted. *Ib.* *Ante*, secs. 266, note, 269, 285, note; *post*, 292, note.

At a stated meeting of a select body at which all the members are not present, it is not competent, in the opinion of the Court of Appeals of *New York*, in the absence of a statute or by-law to that effect, to appoint a *future new or special meeting to determine independent matters not taken up*, and which could not legally have been taken up at the stated meeting, and to act at such future time, unless *all* have *actual* notice. If any one thus en-

belonged to the inhabitants assembled in annual town meeting. It was provided that if at this meeting no tax was voted, or an insufficient tax, the common council "should call a meeting of the inhabitants, by advertisement or otherwise," for the purpose of having them vote a tax. The court seemed to be of opinion that the common council were obliged to specify the objects of the call in their notice, it being a special meeting; and it decided that if it did specify a particular purpose, that any act of the meeting "wholly beside the special purpose of the meeting as stated," was void.[1]

§ 287 (225). **Adjournment of Regular Meeting.** — A *regular meeting*, unless special provision is made to the contrary, *may adjourn* to a future fixed day; and at such meeting it will be lawful to transact any business which might have been transacted at the stated meeting, of which it is, indeed, but the continuation. Unless such be the special requirement of the charter or of a by-law, or the established or general usage, the adjourned regular meeting would not, it is supposed, be limited to completing particular items of business which had been actually entered upon and left unfinished at the first meeting; but might, if the adjournment was general, do any act which might lawfully have been done had no adjournment taken place.[2] Where the meeting, if a regular one, can only act upon a specific matter, or, if a special one, can only act upon matters of which notice has been given to the members, while it is competent in either case to adjourn, the adjourned meeting is in both cases limited, equally with the first meeting, to the specified matters.[3]

titled to notice does not receive it, and is not present, the action is void. People *v.* Batchelor, 22 N. Y. 128 (1860); to be read in connection with Smith *v.* Law, 21 N. Y. 296.

[1] Bergen *v.* Clarkson, 1 Halst. (N. J.) 352 (1796). See, also, Rex *v.* Liverpool, 2 Burr. 735; Rex *v.* Doncaster, *Ib.* 738; King *v.* Mayor, &c., 1 Str. 385; Machell *v.* Nevinson, 2 Ld. Raym. 1355; 2 Bac. Abr. 18.

[2] Smith *v.* Law, 21 N. Y. 296; Warner *v.* Mower, 11 Vt. 385; People *v.* Batchelor, 22 N. Y. 128; Rawlinson on Corp. (5th ed.) 136, note; Rex *v.* Harris, 1 B. & A. 936; Scadding *v.* Lorant, 5 Eng. Law and Equity, 16 (1851); People *v.* Martin, 1 Seld. (5 N. Y.) 22; Street Case, 1 La. An. 412; Hudson Co. *v.* State, 4 Zabr. (24 N. J. L.) 718; New Orleans *v.* Brooks, 36 La. An. 641; *Ex parte* Mirande, 73 Cal. 365. *Ante*, secs. 269, 285. Adjournment by minority to day appointed for regular meeting. People *v.* Rochester, 5 Lansing (N. Y.), 142 (1871).

[3] Scadding *v.* Lorant, 5 Eng. Law and Equity, 16; s. c. 17 Law T. 225, H. of L. (1851). In this case, the statute (a local act) required notice to be given of a meeting of vestrymen to be held for the *purpose of making a rate* for the relief of the poor. Such notice was given, specifying the purpose of the meeting; the meeting was held accordingly on the 12th of August, when it was resolved that a rate should be made; but as the details could not be completed, the meeting was adjourned, and at an adjourned meeting the matter of the rate was completed; but *the notice for the adjourned meeting contained no mention of the purpose* for which the meeting assembled. And the question which the House of Lords put to the judges in reference to the adjourned meeting, was: "Supposing the rate to be otherwise valid, was it invalid by reason of the notice not stating the purpose for which the [adjourned] meeting assembled?" The judges answered: "We are unanimously of opinion that the rate was not rendered invalid by reason of the alleged defect in the notice of the adjourned meeting. It was sufficient to give notice [as required by the act] on the church door, of the purpose for which the first meeting was to be held, and, that notice having been duly given, we think that the notice so given extended to all the adjourned meetings, such adjourned meetings being held for the purpose of completing the unfinished business of the first meeting, and being in continuation of that meeting." And such was the judgment of the House of Lords. See, also, Rex *v.* Harris, 1 Barn. & Ad. 936. "Meetings may be adjourned, but nothing may be transacted at any adjourned meeting save the unfinished business of the former meeting." Brice's Ultra Vires, Green's Am. ed. 534, citing Reg. *v.* Grimshaw, 10 Q. B. 747, which holds that at an adjourned quarterly meeting notice must be given of any business not actually begun at the quarterly meeting, but of business actually begun no notice is necessary. The text, sec. 287, states the rule as it seems to be understood in this country, viz. that under the conditions stated in the text the adjourned meeting may transact any business which might have been transacted by the regular meeting.

Presumption as to regularity of adjournment when proceedings of the adjourned meeting come before the court. Hudson Co. *v.* State, 4 Zabr. (24 N. J. L.) 718; Insurance Co. *v.* Sortwell, 8 Allen (Mass.), 217; State *v.* Jersey City, 1 Dutch. (N. J.) 309; State *v.* Smith, 22 Minn. 218 (1875). *Supra*, sec. 285, note.

[1] Where an ordinance is enacted in accordance with the provisions of a statute, the fact that in its passage a parliamentary rule was violated, will not render it invalid. McGraw *v.* Whitson, 69 Iowa, 348. Where the mayor has the right to vote only in *case of a tie*, he may lawfully exercise the power when one half the members of the council have voted and the other half have abstained from voting. Launtz *v.* People, 113 Ill. 137. *Ante*, sec. 270.

[2] Wetmore *v.* Story, 22 Barb. (N. Y.) 414 (1856).

[3] Wetmore *v.* Story, 22 Barb. (N. Y.) 414 (1856). A subsequent council is bound by knowledge duly communicated to a previous council. Bank *v.* Seton, 1 Pet. (U. S.) 299 (1828). In Commonwealth *v.* Lancaster, 5 Watts (Pa.), 152, *Gibson*, C. J., expressed his opinion to be that, notwithstanding a by-law or rule requires certain corporate acts to be in a

§ 288 (226). **Mode of Proceeding when convened.** — After a meeting of the council is duly convened, *the mode of proceeding is regulated* by the charter or constituent act, by ordinances passed for that purpose, and by the general rules, so far as in their nature applicable, which govern other deliberative and legislative bodies.[1] If the council consists of two boards, the concurrence of both is essential to valid legislation, and this concurrence must be by simultaneously existing bodies.[2] The rule of legislative bodies consisting of two branches, that unfinished business at the end of a session is discontinued, and must be afterwards taken up anew, if at all, was considered applicable to the legislative acts of the common council of New York, composed of a board of aldermen and a board of assistant aldermen.[3]

§ 289 (227). **Committees of Council.** — The council *may ascertain facts through the medium of a committee*, and the members of the council may, where they know the facts of their personal knowledge, act without further inquiry.[1] As a public corporation may entirely revoke the powers of a committee it has appointed, so it may control the execution of those powers by increasing the number of the committee. If the new members, either by design or mistake, are excluded from acting, the proceedings of the others will be irregular.[2]

§ 290 (228). **Right to rescind Previous Acts.** — At any time before the *rights of third persons* have vested, a council or other corporate body may, if consistent with its charter and rules of action, *rescind previous votes and orders*.[3] Thus a vote levying a

given form, and that alterations of such by-law or rule shall only be made by a vote of two thirds of the members, yet that a majority may repeal the by-law or rule, and may, without such repeal, do valid acts, not in the prescribed form, by a majority vote.

[1] Bissell *v.* Jeffersonville, 24 How. (U. S.) 287, 296, *per Clifford*, J.; Commonwealth *v.* Pittsburgh, 14 Pa. St. 177; Main *v.* Ft. Smith, 49 Ark. 480. Council may order sewer to be built by a committee. Collins *v.* Holyoke, 146 Mass. 298 (1888); Dorey *v.* Boston, 146 Mass. 336, 339, and cases cited. As to power of council to appoint officers, and when it may delegate its powers to a committee. *Ib.*; Preble *v.* Portland, 45 Me. 241; Salmon *v.* Haynes, 50 N. J. L. 97 (1888); *ante*, secs. 96, 200, 283, note. The English Municipal Corporations Act 1882, sec. 22, provides that "the council may appoint out of their own body such and so many committees as they think fit, for any purposes which in the opinion of the council would be better regulated and managed by means of such committees; but the acts of every such committee shall be submitted to the council for their approval."

[2] Damon *v.* Granby, 2 Pick. (Mass.) 345 (1824). In this case it was further held, where the agents of a town contracted with the plaintiff "to erect a meeting-house on a place to be designated by a committee of the town," that the town might disagree to the selection, and "designate the place for themselves, at any time before the ground was prepared," on indemnifying the plaintiff for any extra labor or expense which their fluctuating proceedings may have occasioned. A notice to appear before a committee to whom a matter, as, for example, the laying out or altering of a street, has been duly referred, is equivalent to a notice to appear before the city council, as, for this purpose, the committee represent the council. Preble *v.* Portland, 45 Me. 241 (1858).

[3] Bigelow *v.* Hillman, 37 Me. 58; Reiff *v.* Conner, 5 Eng. (10 Ark.) 241; State *v.* Hoyt, 2 Oreg. 246; *ante*, sec. 69; Road Case, 17 Pa. St. 71, 75; New Orleans *v.* St. Louis Church, 11 La. An. 244. Reconsideration at subsequent meeting. Locke *v.* Rochester, 5 Lansing (N. Y.), 11 (1871); Sank *v.* Philadelphia, 1 Pa. Leg. Gaz. Rep. 259. "The right of *reconsidering* lost measures [at the same meeting, or pursuant to its rules] inheres in every body possessing legislative powers." *Per Whelpley*, C. J., Jersey City *v.* State, 1 Vroom (30 N. J. L.), 521, 529 (1863); Red *v.* Augusta, 25 Ga. 386. "All deliberative assemblies, during their session, have a right to do and undo, consider and reconsider, as often as they think proper, and it is the *result* only which is done." *Per Kirkpatrick*, C. J., in State *v.* Foster, 2 Halst. (N. J.) 101, 107 (1823). See, also, State *v.* Jersey City, 3 Dutch. (N. J.) 536. While public money is in the possession of the proper officer, the proper authorities have entire control over it, and they may, so far as the officer holding it is concerned, rescind a prior order (not yet complied with) to pay money to an individual. Tucker *v.* Justices, 13 Ire. (N. C.) Law, 434; Dey *v.* Lee, 4 Jones (N. C.) Law, 238. A resolution is not invalid because passed upon a reconsideration of a negative vote moved by one who voted originally with the minority. Locke *v.* Rochester, 5 Lansing (N. Y.), 11 (1871). But in Sank *v.* Philadelphia, 8 Phila. Rep. (by Wallace) 117, a *nisi prius* decision of the Supreme Court, it was held that the city councils, having once voted to sustain the mayor's veto of an ordinance passed by them, could not reconsider this vote, nor take any further action on the measure. 6 Am. Law Rev. 720.

The vote of a *town meeting rescinding its former action* in authorizing a subscription in aid of a railroad held to be lawful, no rights of third parties having vested, and nothing having been done under the authority to subscribe. Estey *v.* Starr, 56 Vt. 690. A vote ratifying a contract made by town officers without due authority cannot be rescinded so as to affect the validity of the contract. Brown *v.* Winterport, 79 Me. 305.

tax, so long as it rests in mere resolution, and has not been acted upon, may be reconsidered, and, if rescinded, the collector cannot legally proceed to collect the tax.[1]

§ 291 (229). **Charter requirement of Vote by Ayes and Nays.** — A provision of a city charter, that the *ayes and nays shall be called* and published whenever the vote of the common council shall be taken on any proposed improvement involving a tax or assessment upon the citizens, was considered, by two of the three of the members of the Supreme Court of New York, notwithstanding the use of the word "*shall*," to be directory merely, "the essential requisite being the determination of the corporation, and not the form or manner of expressing that determination."[2] But an *opposite view* has elsewhere, as we think properly, been taken of similar provisions, the courts regarding the requirement that votes shall in such cases be entered at large on the minutes, as intended to accomplish

[1] Stoddard *v.* Gilman, 22 Vt. 568; Pond *v.* Negus, 3 Mass. 230.

[2] Striker *v.* Kelly, 7 Hill (N. Y.), 9, 24, 29 (1844), *Bronson*, J., dissenting; s. c. in Error, 2 Denio, 323. Under a law requiring a vote of the common council, where more than a majority is required, to "be taken by the yeas and nays, which shall be entered on the journal," the proceeding, to be valid, must appear from the journal itself, and cannot be proved by evidence *aliunde*. Carlton Street, *In re*, 16 Hun (N. Y.), 497. See McCormick *v.* Bay City, 23 Mich. 457 (1871); Indianola *v.* Jones, 29 Iowa, 282; Mount Morris Square, *In re*, 2 Hill, 20; Elmendorf *v.* Mayor, &c. of N. Y., 25 Wend. 693. See also, Solomon City *v.* Hughes, 24 Kan. 211. The view expressed in the *New York* cases, referred to and approved. St. Louis *v.* Foster, 52 Mo. 513 (1873); *per Wagner*, J.; *post*, sec. 450, note. In Morrison *v.* Lawrence, 98 Mass. 219, the grant of an important special power was construed to require, as a condition to its exercise, the taking of the ayes and nays, and a record of the vote. The decision or determination of a question by a town meeting or common council should be, and probably must be, by a formal *vote* or *resolution*. People *v.* Adams, 9 Wend. (N. Y.) 333 (1832); Denning *v.* Roome, 6 Wend. (N. Y.) 651 (1831). A requirement that the vote "shall in all cases be taken by ayes and noes" held not to apply to votes on *motions to adjourn*. Green Bay *v.* Brauns, 50 Wis. 204.

an important public purpose, and therefore consider the provision as mandatory, and its observance essential to valid corporate action.[1] The proper remedy for the council is to cause a *nunc pro tunc* entry to be made.[2] This it has power to do.[3] Statutory provision requiring for the *passage of municipal ordinances* of a general nature that they *be read on three different days*, unless three-fourths of all the members elected shall dispense with the rule, is mandatory. Thus where two ordinances were reported for passage, and the requisite number voted in favor of suspending the rule for reading on different days, and the ordinances were respectively passed, it was held that the vote suspending the rules applied only to the first ordinance, and that the second was not legally adopted.[4]

§ 292 (230). **Acts by less than Quorum void.** — Acts done *when less than a legal quorum* is present, or which were not concurred in by the requisite number, are void.[5] This is a fundamental rule in

[1] Steckert *v.* East Saginaw, 22 Mich. 104 (1870), where the purpose of the requirement is well expounded; Spangler *v.* Jacoby, 14 Ill. 297; Supervisors, &c. *v.* People, 25 Ill. 181; Morrison *v.* Lawrence, *supra;* McCormick *v.* Bay City, 23 Mich. 457 (1871); Delphi *v.* Evans, 36 Ind. 90 (1871); Cutler *v.* Russellville, 40 Ark. 105; Town of Olin *v.* Meyers, 55 Iowa, 209. Accordingly a provision of statute that no ordinance for the improvement of a street should be adopted, except upon the report and recommendation of the city board of improvements, and requiring that such report be *recorded* in its proceedings, is mandatory, and the report and recommendation were held jurisdictional, and not provable by parol evidence. Reynolds *v.* Schweinefus, 1 Sup. Court, Cin. (Ohio) Rep. 215.

Where a general law required the yeas and nays to be called *and recorded* on the passage of all ordinances, it was held by the Supreme Court of *Colorado* that when the record failed to show such calling and recording as to an ordinance concerning misdemeanors, the ordinance was a nullity and a conviction under it void. Tracy *v.* The People, 6 Col. 151.

Where a local improvement is proposed, and it is not petitioned for by a majority of the owners of property to be assessed, the charter declares that it shall be ordered *only* by the vote of at least three-fourths of all the aldermen present, such vote to be by *ayes* and *nays* on the record of the common council; if, when the record is presented, it does not appear that the improvement was ordered by a vote of three-fourths of the aldermen present, by vote entered by ayes and nays, the ordinance is void, and judgment for a sale of the property to pay the local assessment cannot rightfully be entered. Rich *v.* Chicago, 59 Ill. 286 (1871). Effect of such a provision on the power to make a contract by parol. Indianola *v.* Jones, 29 Iowa, 282 (1870); *post,* sec. 449, and note.

[2] Logansport *v.* Crockett, 64 Ind. 319; Mayhew *v.* Gay Head, 13 Allen, 129; Steckert *v.* East Saginaw, 22 Mich. 104; Delphi *v.* Evans, 36 Ind. 90; Commissioners *v.* Hearne, 59 Ala. 371; Musselman *v.* Manly, 42 Ind. 462; Vawter *v.* Franklin College, 53 Ind. 88.

[3] See preceding note.

[4] Bloom *v.* City of Xenia, 32 Ohio St. 461; s. p. Morrison *v.* Lawrence, 98 Mass. 219; State *v.* Hudson, 5 Dutch. (N. J.) 478; Delphi *v.* Evans, 36 Ind. 90. This is not the rule in *New York.* Cases *supra.*

[5] Logansport *v.* Legg, 20 Ind. 315 (1863); Ferguson *v.* Chittenden Co., 1 Eng. (6 Ark.) 479 (1846); Price *v.* Railroad Company, 13 Ind. 58 (1859); McCracken *v.* San Francisco, 16 Cal. 591; Pimental

the law of corporations; but whether, in favor of the holder of negotiable securities issued, or purporting to be issued, under authority conferred by the legislature, the corporation might not, in some cases, be estopped to show that a quorum was not present or that the requisite number did not concur in the act, is a question which remains, perhaps, to be settled.[1] It is clear that members of a council cannot properly act upon questions in which *their own pecuniary interest* is directly and specially involved.[2] But it has been held in Michigan that proceedings on the part of a municipal corporation ordering a paving improvement are not rendered invalid on the ground that two of the aldermen who formed part of the quorum of the common council which ordered the improvement, and without whose presence there would have been no quorum, were petitioners for the improvement and owners of property liable to assessment therefor. It might be otherwise, the court concede, if the common council acted as commissioners of apportionment in making the assessment upon the property that was to bear the burden, or on the confirmation of a report in which the interest of these aldermen was directly involved.[3]

v. San Francisco, 21 Cal. 351; State *v.* Wilkesville, 20 Ohio St. 288. Number present and acting, how proved. 13 Ind. 58, *supra.* Presence of quorum, when presumed. Insurance Company *v.* Sortwell, 8 Allen (Mass.), 217. *Ante,* secs. 236, note, 267, note, 285, note, 286, note.

[1] See *ante,* sec. 89; *post,* chapter on Contracts. Construction of charter provision requiring *unanimity. Post,* sec. 310.

[2] Members of a municipal board are disqualified to vote therein on propositions in which they have a direct pecuniary interest adverse to the municipality they represent. Oconto County Sup. *v.* Hall, 47 Wis. 208; Pickett *v.* School Dist., 25 Wis. 551; Coles *v.* Williamsburgh, 10 Wend. 659; Walworth Bank *v.* F. L. & T. Co., 16 Wis. 629; United Brethren Church *v.* Vandusen, 37 Wis. 54. *Post,* chap. xiv.; *ante,* sec. 237, note. There is an express provision to this effect in the English Municipal Corporations Act of 1882, sec. 22.

[3] Steckert *v.* East Saginaw, 22 Mich. 104 (1870), where the reasons for the distinctions taken are clearly stated by *Cooley,* J. In the same State it was also held that the mayor of a city, who was a practising lawyer, might lawfully be employed, when there was no collusion or fraud, and no doubt as to the necessity and value of his services, by a resolution of the council to appear and defend a suit against the city, and that he could recover the value of his services. Niles, Mayor, &c. *v.* Muzzy, 33 Mich. 61 (1875); s. c. 20 Am. Rep. 670.

Right of corporation to contract with its officers or councilmen. Ante, sec. 283, note, and cases cited; *post,* sec. 443, note.

Note. — In Rushville Gas Co. *v.* Rushville (Ind. Sup. Ct. 1889, MSS., 41 Alb. L. J. 143), the city council was composed of six members, all of whom were present and qualified to vote upon a resolution, which, when submitted, was voted for by three members, the other three, though present, refusing to vote. The court held that the resolution, having received the vote of a majority of a quorum, although not of a majority of all present, was legally adopted. It deserves further consideration whether this result is consistent with the majority rule applicable to definite bodies.