declared with respect to a court of general and superior jurisdiction, as of the Supreme Court of New York, that its action (for example, in confirming appraisements for opening streets, or under a railroad act) "shall *be final and conclusive* upon the parties interested and upon all other persons," the right of appeal, which would otherwise exist, from the decision of such court to a still higher tribunal, as to the Court of Appeals, is destroyed.[1] A charter provision to the effect that appeals and writs of error from judgments of the mayor, in cases arising under the charter, should only be allowed in cases where the fine was over five dollars, was considered as evincing the legislative intention that in cases where the fine was under that sum the judgment should be final, and hence a writ of prohibition will not lie to restrain its collection, nor can it be reviewed on *certiorari*.[2]

§ 441 (369). **Same subject.** — In Virginia it is decided that in a proceeding before the mayor or a justice to impose a penalty on a party for obstructing a street, the mayor or justice cannot, if the defendant *bona fide* sets up title to the land claimed as a street, inquire into the validity of the claim, the court holding that by the principles of the common law (which are not changed by the statutes), a *bona fide* assertion of title to property or to an incorporeal hereditament or real franchise ousted the jurisdiction of these inferior magistrates or tribunals.[3]

*Per Campbell*, J., Jackson *v.* People, 9 Mich. 111, 117 (1860). Further see chap. xxii. *post*, sec. 925 *et seq.*

An *appeal* from inferior tribunals does not exist unless plainly given. People *v.* Police Justice, 7 Mich. 456; Conboy *v.* Iowa City, 2 Iowa, 90; Muscatine *v.* Steck, 7 Iowa, 505; Dubuque *v.* Rebman, 1 Iowa, 444; McGarty *v.* Deming, 51 Conn. 422, where, however, the charter denied the right of an appeal. *Certiorari*, on the other hand, will lie unless plainly denied, or other specific remedy be given. Cunningham *v.* Squires, 2 West Va. 422 (1865); *post*, sec. 611, and chap. xxii. on Remedies against Illegal Corporate Acts, *post*.

[1] Canal and Walker Streets, *In re*, 12 N. Y. (2 Kern.) 406 (1855); New York, Central R. Co. *v.* Marvin, 11 N. Y. (1 Kern.) 276.

[2] Wertheimer *v.* Boonville, 29 Mo. 254 (1860).

[3] Warwick *v.* Mayo, 15 Gratt. (Va.) 528 (1860). To the same effect, see Jackson *v.* People, 9 Mich. 111 (1860); Grand Rapids *v.* Hughes, 15 Mich. 54 (1866). See chapter on Streets. What *record of conviction* before corporation officers or courts should show. Keeler *v.* Milledge, 4 Zabr. (24 N. J. L.) 142; Muscatine *v.* Steck, 7 Iowa, 505; Buck *v.* Danzenbacker, 8 Vroom (37 N. J. L.), 359; St. Peter *v.* Bauer, 19 Minn. 327 (1872); Goldthwaite *v.* Montgomery, 50 Ala. 486 (1874). See chap. xxii. *post*.

A town officer who holds in custody a person committed by a verbal order of a police magistrate for non-payment of a fine imposed for the breach of a town ordinance, acts not only without authority but in violation of law. Odell Trustees *v.* Schroeder, 58 Ill. 353 (1871).



## CHAPTER XIV.

### CONTRACTS.

§ 442 (370). **Subject outlined.** — The *mode of enforcing the contracts* of municipal corporations will be considered hereafter.[1] In this chapter we shall treat, in the order below indicated, of the power of such corporations to make contracts of different kinds, the mode of exercising the power, and the effect of transcending it.

1. Extent of Power to contract, and how conferred — secs. 443–448.
2. Mode of exercising the Power — sec. 449.
3. Seal not necessary unless required — May be concluded by Vote or Ordinance — secs. 450, 451.
4. When Corporation bound by Contracts made by Agents — Mode of Execution — secs. 452–456.
5. Contracts beyond Corporate Powers void — *Ultra Vires* a Defence — secs. 457, 458.
6. Implied Contracts — When Deducible — secs. 459, 460.
7. Ratification of Unauthorized Contract — secs. 463–465.
8. Provision requiring Letting to Lowest Bidder — secs. 466–470.
9. Contract of Suretyship — sec. 471.
10. Rights and Liabilities as respects Authorized Contracts — Illustrations — Cases mentioned — Power to settle Disputed Claims — To give Extra Compensation — To employ Attorneys — secs. 472–479.
11. Contracts for Public Works — Rights of Contractors — secs. 480–483.
12. Same — Corporate Control under Stipulation to that effect — secs. 480–483.
13. Evidences of Indebtedness — Negotiable Bonds — secs. 484, 485.
14. Ordinary Warrants or Orders — Their Legal Nature — secs. 487, 488.
15. Liability of Indorsers thereof — sec. 489.

[1] See *post*, chaps. xx., xxii., xxiii. Legislative power over and in respect of contracts made by municipal corporations. See chaps. iv., vii., and viii., *ante*.

16. Payment and Cancellation of Orders and Warrants, — sec. 500.
17. Rights and Remedies of Holders thereof — secs. 501, 502.
18. Defences thereto — *Ultra Vires* — Fraud — Want of Consideration — sec. 504.
19. Orders payable out of a Particular Fund — sec. 505.
20. Interest on Corporate Indebtedness — sec. 506.
21. Railroad Aid Bonds — Course of Decision in U. S. Supreme Court — secs. 511–515.
22. Leading Cases in National Supreme Court on the Subject noticed — secs. 521–534.
23. Decisions in State Courts referred to — Conclusions stated — secs. 550–554.

§ 443 (371). **Extent of Power to make Contracts; and how conferred.** — In determining *the extent of the power* of a municipal corporation to make contracts, and in ascertaining *the mode* in which the power is to be exercised, the importance of a careful study of the charter or incorporating act, and of the general legislation of the State on the subject, if there be any, cannot be too strongly urged. Where there are express provisions on the subject, these will, of course, measure, as far as they extend, the authority of the corporation. The power to make contracts, and to sue and be sued thereon, is usually conferred, in general terms, in the incorporating act. But where the power is conferred in this manner it is not to be construed as authorizing the making of contracts of all descriptions, but only such as are necessary and usual, fit and proper, to enable the corporation to secure or to carry into effect the purposes for which it was created; and the extent of the power will depend upon the other provisions of the charter prescribing the matters in respect of which the corporation is authorized to act. To the extent necessary to execute the special powers and functions with which it is endowed by its charter, there is, indeed, an *implied or incidental authority* to contract obligations, and to sue and be sued in the corporate name.[1]

[1] 1 Kyd, 69, 70; 2 Kent Com. 224; Angell & Ames, secs. 110, 271; Galena *v.* Corwith, 48 Ill. 423 (1868); Straus *v.* Eagle Ins. Co., 5 Ohio St. 59 (1855); Chaffee *v.* Granger, 6 Mich. 51; Douglass *v.* Virginia City, 5 Nev. 147 (1869); Goodrich *v.* Detroit, 12 Mich. 279; Bank of Columbia *v.* Patterson, 7 Cranch, 299 (1813); Siebrecht *v.* New Orleans, 12 La. An. 496 (1857; Bateman *v.* Ashton-under-Lyne, 3 H. & N. 322 (1858); Nowell *v.* Worcester, 9 Exch. 457 (1854). Indianapolis *v.* Indianapolis Gas Co., 66 Ind. 396, approving text; Montgomery County *v.* Barber, 45 Ala. 237 (1871); Smith *v.* Stephan, 66 Md. 381; Galveston *v.* Loonie, 54 Tex. 517.

Under general authority to make all contracts necessary for its welfare, a city may contract for *water-works.* Cabot *v.* Rome, 28 Ga. 50; see Wells *v.* Atlanta, 43 Ga. 67. A contract granting the *exclusive right to furnish water* to a city, made under a power "to provide a supply of water," sustained, and the city was enjoined from granting the right to lay pipes to another company, on the ground that its power was exhausted. Atlantic City Water-Works *v.* Atlantic City, 39 N. J. Eq. (12 Stew.) 367. See Index, titles, *Monopolies; Water and Water-Works.* Duty and power of municipality as owner of *water-works.* McKnight *v.* New Orleans, 24 La. An. 412 (1872); Grant *v.* Davenport, 36 Iowa, 396 (1873); Hale *v.* Houghton, 8 Mich. 458. May contract for *lighting streets,* &c., Indianapolis *v.* Indianapolis Gas Co., 66 Ind. 396. For *grading streets.* Sturtevant *v.* Alton, 3 McLean, 393. To *build sidewalks.* Wyandotte *v.* Zeitz, 21 Kan. 649; Lawrence *v.* Killam, 11 Kan. 512, approving text. For "*breakwater*" to protect streets of a city on the lake. Miller *v.* Milwaukee, 14 Wis. 642; approved, *arguendo,* by *Cole,* J., in Clason *v.* Milwaukee, 30 Wis. 316, 321 (1872). *Supra,* sec. 261, note. *Legislative power over municipal contracts. Ante,* chap. iv.; Grant *v.* Davenport, 36 Iowa, 396 (1873). *Post,* sec. 544.



§ 444. **Contracts with Municipal Officers; Fiduciary Relations.** — It is a well established and salutary doctrine that he who is en-

The city of Richmond possessed, under its charter, all the powers of municipal corporations, including the power "to contract and be contracted with," and its council was specially empowered "to pass all by-laws which they shall deem necessary for the peace, comfort, convenience, good order, good morals, health, or safety of the city, or of the people or property therein." In April, 1865, in anticipation of the evacuation of the city by the confederate army and the entry of the national forces, the *city council ordered the destruction of all the liquor in the city,* and pledged the faith of the city for the payment of its value. It was decided by the Court of Appeals that under the provision of the charter above mentioned the council had authority to make the order and pledge, and hence the city was responsible for the value of liquor destroyed under the order of the council. Jones *v.* Richmond, 18 Gratt. (Va.) 517 (1868). The same question upon the same resolutions of the city council was presented to the United States Supreme Court in Richmond *v.* Smith, 15 Wall. 429 (1872); and it followed, without examination into its correctness, the exposition of the charter given by the State court in Jones *v.* Richmond, *supra.* Upon the general principles of construction, the author doubts whether the order for the destruction of the liquors was within the scope of the corporate powers of the city. *Ante,* secs. 89, 90, 91, and notes. Contract made by a city, under government therein set up by the United States military authority, held valid. Prather *v.* New Orleans, 24 La. An. 41. Special *prohibition* in a city charter construed to extend to *all contracts of sale* to the city. Gregory *v.* Jersey City, 5 Vroom (34 N. J. L.), 390. Where an executory contract with a municipal corporation is not in its nature necessarily personal, as, for example, a contract for cleaning streets, it may, certainly with the assent, express or implied, of the city, *be assigned,* if there be no restriction on the right, and the city retains the personal obligation of the original contractor and of his sureties. Devlin *v.* New York, 63 N. Y. 8 (1875).

No corporation can make a valid contract *not to exercise part of the franchise* committed to it by the State for public purposes. St. Louis *v.* St. Louis Gaslight Co., 5 Mo. App. 484, 529. See opinion of the Supreme Court of *Missouri* on Appeal, in the case last cited; and see *ante,* secs. 96, 97, 357, and *post,* secs. 716, 780; see also Index, title *Delegation of Public Powers.*

In *The Maggie P.,* 25 Fed. Rep. 202, it appeared that the city of St. Louis, which, by its charter, had *general control over the harbor and improvements therein,* including power "to keep the wharf and the river along the shore free from wrecks and other improper obstructions," entered into a contract with the owner of a steamboat which had sunk, to use the city's harbor boat in pumping out the wreck, for a consideration; and the question was presented whether the city could be held liable for damages caused by its failure to carry out

trusted with the business of others cannot be allowed to make such business an object of pecuniary profit to himself. This rule does not depend on reasoning technical in its character, and is not local in its application. It is based upon principles of reason, of morality, and of public policy. It has its foundation in the very constitution of our nature, for it has authoritatively been declared that a man cannot serve two masters, and is recognized and enforced wherever a well-regulated system of jurisprudence prevails.[1] The law will in no case permit persons who have undertaken a character or a charge to change or invert that character by leaving it and acting for themselves in a business in which their character binds them to act for others. The application of the rule may in some instances appear to bear hard upon individuals who have committed no moral wrong; but it is essential to the keeping of all parties filling a fiduciary character to their duty, to preserve the rule in its integrity, and to apply it to every case which justly falls within its principle.[2] The principle generally applicable to all officers and

the contract. *Brewer*, J., said: "I suppose a city can make no contract for the discharge of a purely public duty, — such a contract as in case of performance it can enforce compensation for, or for non-performance expose itself to liability. It cannot use public funds in any such direction. . . . At the same time, when it has in its possession instrumentalities, and hires employees for the purpose of discharging some public duty, I see no reason why, when the exigencies of public duties do not require the use of those instrumentalities and employees, it may not make a valid contract to use them in some private service. . . . And, generally speaking, when public duty does not interfere with private service, a city may make a valid contract for the use of its instrumentalities in the latter. . . . The testimony shows that the city, through its officers, has been in the habit of making these contracts and receiving compensation therefor; and having made that a business, so to speak, having received gain from such contracts, it does not lie in its mouth to say now that there was no officer authorized by ordinance to make this kind of contract."

[1] Toronto *v.* Bowes, 4 Grant (Canada), 504, where the subject is fully considered. In some of the States statutes have been enacted declaring void all contracts made by municipal corporations with their officers. In *Indiana* such a statute was strictly enforced. Case *v.* Johnson, 91 Ind. 477; approved Benton *v.* Hamilton, 110 Ind. 294.

[2] Port *v.* Russell, 36 Ind. 60; s. c. 10 Am. Rep. 5; Board of Comm'rs *v.* Reynolds, 44 Ind. 509; s. c. 15 Am. Rep. 245; Macon *v.* Huff, 60 Ga. 221; York Buildings Co. *v.* Mackenzie, 8 Brown, P. C. 42; Liquidators, &c. *v.* Coleman, L. R. 6 E. & I. App. C. 189; Aberdeen R. Co. *v.* Blaikie, 1 Macq. App. Cases, 461. See full review of authorities in Gardner *v.* Ogden, 22 N. Y. 332; Butts *v.* Wood, 37 N. Y. 317, and cases cited; McGregor *v.* Logansport, 79 Ind. 166; Fort Wayne *v.* Rosenthal, 75 Ind. 156; Emigrant Co. *v.* Wright Co., 97 U. S. 339 (1877). In this case the Supreme Court of the United States, by Mr. Justice *Miller*, in declaring a contract void, say: "It appears that for some time before this contract was made the county had been urging her claim to swamp lands before the department at Washington, through Mr. S. who acted as her agent. A short time before this contract was made Mr. S. informed the authorities of the county that their claim had been rejected, and that this rejection was accompanied by the announcement of a rule which left but little to hope for on the part of the county. Very shortly after this Mr. C., as the agent of the emigrant company, made his appearance in Wright County and procured the contract we have mentioned. As soon as this was done, Mr. S., as the agent of the emigrant company, by the assistance, as he says, of able lawyers, and in the cases of other counties with whom the company had similar contracts, inaugurated proceedings to procure the reversal of the rule announced by the department. Succeeding in this he presented the renewed claim of Wright County, and secured the allowance of several hundred acres still unsold in the county, and money and scrip for six thousand acres to be located elsewhere in lieu of swamp lands sold by the government. It is not a violent presumption, under all the circumstances of this case, that when, just after Mr. S. had made the impression on the supervisors of Wright County that their case was hopeless, Mr. C. appeared in Wright County, he had some information of a different character on which he acted, and which was not communicated to the supervisors. We are not convinced that any false representations were made by the agents or officers of the emigrant company. But the impression made upon us by the whole testimony is that the officers and citizens of the county were in gross ignorance of the nature and value of what they were selling; that the emigrant company, on the other hand, were well informed in regard to both, and withheld this information unfairly from the officers of the county. *That the sudden change of the relationship of Mr. S. from an unsuccessful agent of the county to a successful agent of the company requires an explanation which has not been satisfactorily given. That the fact that all parties knew they were dealing with a trust fund devoted by the donor to a specific purpose demanded the utmost good faith on the part of the purchaser.* That so far from this there is a provision for a diversion of the fund to other purposes, a gross inadequacy of consideration, and a successful speculation at the expense of the rights of the public."



directors of a corporation is that they cannot enter into contracts with such corporation to do any work for it, nor can they subsequently derive any benefit personally from such contract.[1] To deny the application of the rule to municipal bodies would, in the opinion of the Canadian chancery court, whose views we adopt and approve, be to deprive the rule of much of its value; for the well working of the municipal system, through which a large portion of the affairs of the country are administered, must depend very much upon the freedom from abuse with which they are conducted. Nothing can more tend to correct the tendency to abuse than to make abuses unprofitable to those who engage in them, and to have them stamped as abuses in courts of justice. The tendency to abuse may indeed be in part corrected by public opinion; but public opinion itself is acted upon by the mode in which courts deal with such abuses as are brought within their cognizance. Accordingly, where in the case just referred to, the *mayor of a city secretly contracted to purchase at a discount, a large amount of the debentures of the city*, which were expected to be issued under a future by-law of the city council, and was himself afterwards an active party in procuring and giving effect to the by-law which was subsequently passed, the court of chancery held him to be a trustee for the city of the profit he derived from

[1] Cases, *supra*, note 2.

the transaction.[1] So, where a member of a municipal corporation agreed with another party to take a contract from the corporation for the execution of certain works in his name, the profits whereof were to be divided between the parties, it was held that such a contract was in contravention of law, and the court of chancery refused to enforce the agreement for a partnership.[2] An action at law on a contract for the sale of goods by a trading partnership, of which a member is also a member of the municipal council, may, where the contract is not executed, be resisted on the ground that one of the plaintiffs is a member of the municipal council.[3] A distinction to be borne in mind is this: if the contract is void as against public policy or is *ultra vires* in the true and strict sense of that expression, there can be no recovery based on the executory provisions of the contract; but if it has been executed in whole or in part, there may be an estoppel or other ground of recovery based upon what has been done. It is obvious, however, that when such is the case the right of recovery is not upon the contract, but upon facts and circumstances independent of the notion that the contract is valid.[4]

[1] Toronto *v.* Bowes, 4 Grant (Canada), 504.

[2] Collins *v.* Swindle, 6 Grant (Canada), 282; Cummings *v.* Saux, 30 La. An. 207; Doll *v.* State, 45 Ohio St. 445.

[3] Brown *v.* Lindsay, 35 Upper Can. Q. B. 509. A contract made by a *mayor*, while in office, *with the city council, to lease a city park* for five years, and for an annual sum paid him to keep the park in repair, —*Held*, to be against public policy and void. Macon *v.* Huff, 60 Ga. 221. But after such contract had been ratified by a subsequent mayor and council, and large sums expended by the contractor in fencing, draining, and ornamenting the park, a court of chancery will not set aside the contract without compelling the city to do equity. *Ib.* The *New York* Commission of Appeals regarded an act of the legislature making it unlawful for a member of the common council to become a contractor under any contract authorized by the council, and declaring such contract to be void at the instance of the city, as but declaratory of the common law, which on grounds of public policy, *prohibits a trustee from contracting with himself.* Accordingly where the plaintiff, a member of the council, voted for a resolution to appropriate money to celebrate the Fourth of July, under which resolution a committee of the members employed the plaintiff to furnish horses and carriages for the celebration, it was held (assuming the appropriation of money for this purpose to be valid under the charter) that the plaintiff's employment was against public policy and void, and that he could not recover against the city for the fair value of the use of the horses and carriages furnished by him. Smith *v.* Albany, 61 N. Y. 444 (1875). But a contract entered into with an officer of the corporation, whereby such officer agreed to keep the streets in repair, was held valid. Albright *v.* Chester T. C., 9 Rich. (S. C.) Law, 399. See, also, Central R. & B. Co. *v.* Claghorn, Speers Eq. 545, 562; *ante*, sec. 283, note; sec. 292; Lawrence *v.* Killam, 11 Kan. 499 (1873).

[4] Thomas *v.* West Jersey R. R. Co. 101 U. S. 71; Pennsylvania R. Co. *v.* St. Louis, A. & T. H. R. Co., 118 U. S. 290. Compare Hitchcock *v.* Galveston, 96 U. S. 341, quoted *infra*. The cases, however, are conflicting upon the point whether the recovery may not be upon the contract, if there be a right of recovery at all. In Morawetz on Corporations (2d ed.) secs. 648, 653, 689–706, the leading authorities as to private corporations are collected and commented on. See *ib.* secs. 621, 718, as to muncipal corporations.



§ 445. **Powers of Public Agents and Officers to make Contracts.** — Public corporations may by their officers and properly authorized agents make contracts the same as individuals and other corporations, in matters that appertain to the corporation; being artificial persons, they cannot contract in any other way.[1] Public officers or agents are held more strictly within their prescribed powers than private general agents; and a contract made by a public agent within the apparent scope of his powers does not bind his principal in the absence of actual authority.[2] There is a broad distinction between the acts of an officer or agent of a public municipal corporation and those of an agent for a private individual. In cases of public agents the public corporation is not bound unless it manifestly appears that the agent is acting within the scope of his authority, or he is held out as having authority to do the act, or is employed in his capacity as a public agent to make the declaration or representation for the government.[3]

§ 446. **Contracts in Respect of Drainage.** — Although the general doctrine is that a municipal corporation *cannot usually exercise its powers beyond its corporate limits*, yet this right may be given either expressly or by implication; and a city with *express authority to provide drainage* was held, in the absence of any restriction, to possess the implied power, in order to find an outlet for sewage beyond its limits, to make a contract with an adjoining landowner giving it such an outlet.[4]

§ 447 (372). **Implied and Incidental Powers; Market Powers; All persons bound to take Notice of Extent of Corporate Powers.** — If a municipal corporation *is authorized to erect markets*, it may contract to buy, or may receive a grant of, land on which to place market buildings, and it may make contracts for the erection of market-houses. As it is the general practice, in granting municipal charters and in general acts for the incorporation of towns and cities, to enumerate their powers and define their duties, it will suffice in this place to remark generally that the authority to enter into contracts necessary and proper to carry into effect their powers and discharge their duties *is impliedly given* to such corporations. But this implied authority is only co-extensive with

[1] Louisville City R. Co. *v.* Louisville, 8 Bush (Ky.), 415 (1871).

[2] Parsel *v.* Barnes, 25 Ark. 261; Williams *v.* Peyton's Lessee, 4 Wheat. 77.

[3] Baltimore *v.* Musgrave, 48 Md. 272; *infra*, sec. 450, note.

[4] Coldwater *v.* Tucker, 36 Mich. 474 (1877); s. c. 24 Am. Rep. 601. *Ante*, secs. 354, 355, 356, as to extent of corporate jurisdiction.

the powers and duties of the corporation; and if any greater authority is claimed it must be sought for in an express or special grant from the legislature. It is scarcely necessary to observe that no contract can be made by a corporation which is *prohibited* by its charter or by the statute law of the State.[1] And it is a general and fundamental principle of law that *all* persons contracting with a municipal corporation must *at their peril inquire into the power* of the corporation or of its officers to make the contract; and a contract beyond the scope of the corporate power is void, although it be under the seal of the corporation.[2] This principle is more strictly applied, and properly so, than in the law of private

[1] Jackson *v.* Bowman, 39 Miss. 671 (1861); Indianapolis *v.* Indianapolis Gas Co., 66 Ind. 396, citing text. Contracts to violate the charter, or to bargain away or restrict the free exercise of legislative discretion, vested in a municipality or its officers, in reference to public trusts, are void. *Ib.*; Thomas *v.* Richmond, 12 Wall. 349 (1870), in which notes issued by the city to circulate as money in contravention of law were adjudged void, and the city held not to be liable either in special or general assumpsit; Morgan *v.* Menzies, 60 Cal. 341. In this case the statute having exempted cities, &c. from giving bond in civil actions, a bond in attachment proceedings given by a city was held void. *Ante*, secs. 89–92, and cases there cited; *post*, sec. 487, and cases cited.

[2] Marsh *v.* Fulton County, 10 Wall. 676 (1870); *ante*, sec. 89; *infra*, sec. 457; Leavenworth *v.* Rankin, 2 Kan. 357 (1864); Wyandotte *v.* Zeitz, 21 Kan. 649; Horn *v.* Baltimore, 30 Md. 218 (1868); Bridgeport *v.* Housatonuc R. Co., 15 Conn. 475, 493; Haynes *v.* Covington, 13 Sm. & Mar. (21 Miss.) 408 (1850); Taft *v.* Pittsford, 28 Vt. 286 (1856); Montgomery City Council *v.* M. & W. P. R. Co., 31 Ala. 76 (1857); Pa., D. & M. Steam Nav. Co. *v.* Dandridge, 8 Gill & J. (Md.) 248, 319; Hodges *v.* Buffalo, 2 Denio (N. Y.), 110; Baltimore *v.* Eschbach, 18 Md. 276, 282 (1861); Baltimore *v.* Reynolds, 20 Md. 1; Dill *v.* Wareham, 7 Met. (Mass.) 438 (1844); Branham *v.* San Jose, 24 Cal. 585, 602; McCoy *v.* Brant, 53 Cal. 247, approving text; Sturtevant *v.* Alton, 3 McLean, 393 (1844); Wallace *v.* San Jose, 29 Cal. 180; State *v.* Mayor, 29 Md. 85, 111 (1868); Bateman *v.* Ashton, 3 Hurl. & Nor. 323; State *v.* Haskell, 20 Iowa, 276; Baltimore *v.* Musgrave, 48 Md. 472; People *v.* Baraga, 39 Mich. 554; Neely *v.* Yorkville, 10 S. C. 141, approving text; Bryan *v.* Page, 51 Tex. 532; Baby *v.* Baby, 5 Upper Can. Q. B. 510; Richmond *v.* Municipality, 8 Upper Can. Q. B. 567; Campbell *v.* Elma, 13 Upper Can. C. P. 296; Standly *v.* Perry, 23 Grant (U. C.), 507; Craycraft *v.* Selvage, 10 Bush (Ky.), 696 (1874); Treadway *v.* Schnauber, 1 Dak. Ter. 236; Ouachita P. J. *v.* Monroe, 37 La. An. 641; Laycock *v.* Baton Rouge, 35 La. An. 475; Keating *v.* Kansas, 84 Mo. 415. Within the scope of its power a corporation may contract to do an act *at any place* other than the one where it is located. Bank of Utica *v.* Smedes, 3 Cow. (N. Y.) 662; Maddox *v.* Graham, 2 Met. (Ky.) 56. Or *prospective* in its terms. Davenport *v.* Hallowell, 10 Me. 317. As to *corporate seal. Ante*, sec. 190. Where a public corporation, transcending its legal power, assumes to direct its officers — for example, commissioners of highways — to bring an action in their own names, or in their name of office, against third persons for trespasses upon the highways, and the action is accordingly brought and the officers are defeated, they cannot sustain an action against the corporation to be reimbursed their costs and expenses; and the reason is, that the action of a corporation directing *such a suit* to be brought, being in excess of its lawful power, is void, and cannot be the foundation of any contract, express or implied. Cornell *v.* Guilford, 1 Denio (N. Y.), 510; *ante*, sec. 147.



corporations. So, also, those *dealing with the agent of a municipal corporation* are likewise bound to ascertain the nature and extent of his authority. This is certainly so in all cases where this authority is special and of record, or conferred by statute. The fact that in such a case the agent made false representations in relation to his authority and what he had already done, will not aid those who trusted to such representations, to establish a liability on the part of his corporate principal.[1]

§ 448. **Scope of Power to Contract.** — Although it is true, as stated in the last section, that a contract made by a municipality in *violation of an express legislative prohibition* is void, yet, in the absence of special legislative restriction, the municipal authorities possess the same power as other debtors to make a new contract in any proper form, purging the former contract of its illegality. This principle is distinctly affirmed and well illustrated in a judgment by the Supreme Court of the United States. A city, in violation of local statutes forbidding the *issue, circulation, or receipt of scrip or currency intended to circulate as money*, issued such currency, engraved in the similitude of bank-paper, and by means

[1] Baltimore *v.* Eschbach, 18 Md. 276, 282; Baltimore *v.* Reynolds, 20 Md. 1 (1862); Delafield *v.* State of Illinois, 2 Hill (N. Y.), 159, 174; 26 Wend. (N. Y.) 192 (1841); affirming s. c., 8 Paige, 531, restraining unauthorized sale of bonds. Hodges *v.* Buffalo, 2 Denio (N. Y.), 110; 3 Comst. 430; 2 Barb. 104; Supervisors, &c. *v.* Bates, 17 N. Y. 242 (1858). This case also determines how far, in such a case, the sureties of such an agent or officer are liable for his acts. And see cases cited *Ib.* p. 245. Chemung Canal Bank *v.* Chemung Co. Sup., 5 Denio, 517; Overseers, &c. of Norwich *v.* Overseers, &c. of Pharsalia, 15 N. Y. 341; Albany *v.* Cunliff, 2 Comst. 178, *per Strong*, J.; Marsh *v.* Fulton Co., 10 Wall. 676 (1870); Miners' Ditch Co. *v.* Zellerbach, 37 Cal. 543 (1869); Swift *v.* Williamsburg, 24 Barb. (N. Y.) 427; Hague *v.* Philadelphia, 48 Pa. St. 527; State *v.* Mayor, &c., 29 Md. 85, 111; Horn *v.* Baltimore, 30 Md. 218 (1868); Thomas *v.* Richmond, 12 Wall. 349 1870), *per Bradley*, J.; Ford *v.* Mayor, &c. of New York, 63 N. Y. 640 (1875); Stoneburgh *v.* Brighton, 5 Upper Can. L. J. 38; Belleview *v.* Hohn, 82 Ky. 1; Farnsworth *v.* Pawtucket, 13 R. I. 82.

Special and limited authority to *borrow money conferred upon the town treasurer*, when exercised, is exhausted, and the town is not liable for money he subsequently borrows and converts to his own use, although he assumed to act, and was, by the lender, supposed to be acting under the authority conferred upon him. Savings Bank *v.* Winchester, 8 Allen (Mass.), 109 (1864); *ante*, sec. 117.

So in Upper Canada it is held that an individual dealing with a corporation through its council or the members of the governing body, is *bound to notice* the objects and limits of their powers, and the manner in which those powers are to be exercised, since their acts, when beyond the scope of their authority or done in a manner unauthorized, are in general nugatory and not binding on the corporation. Ramsay *et al. v.* The Western District Council, 4 Upper Can. Q. B. 374; Silsby *v.* Dunville, 31 Upper Can. C. P. 301; Harr. Manual (5th ed.) p. 12; Morawetz on Corp. (2d ed.) secs. 621, 718.