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.

thereof paid valid debts against itself; subsequently the holders of this illegal currency, at the instance of the city, surrendered the same, and received therefor new obligations of the city in the forms of bonds, to which there was no legal objection except that the consideration was illegal; it was held by the Supreme Court of the United States that the city was liable on the new bonds.[1]

§ 449 (373). **Mode of exercising the Power.** — Respecting *the mode in which contracts by corporations should be made,* it is important to observe that when, as is sometimes the case, the mode of contracting is specially and plainly prescribed and limited, that mode is exclusive and must be pursued, or the contract will not bind the corporation;[2] but the courts have sometimes regarded

[1] Little Rock *v.* Merchants' National Bank, 98 U. S. 308 (1878); s. c. below, 5 Dillon, 299. The statement of the text as to the substance of the statutes of *Arkansas* in this regard is accurate. Mr. Justice *Hunt* supported the judgment of the Supreme Court of the United States by the following argument: —

"It can scarcely be doubted that whoever is capable of entering into an ordinary contract to obtain or receive the means with which to build houses or wharves or the like, may, as a general rule, bind himself by an admission of his obligation. The capacity to make contracts is at the basis of the liability. The first liability of the city was disputed by it. It had gone beyond its power, as it said, in making a debt in the form of bank-notes. If it had not denied its power, judgment and an execution might have gone against it, and the creditor would have obtained his money. This privilege of non-resistance every person retains, and continues to retain. He can reconsider at any time, and confess and admit what the moment before he denied. In 1874 the city of Little Rock did reconsider. It said, 'We will purge the transaction of its illegality. We had the authority to accept from you in satisfaction of amounts received by us for legitimate purposes the sums in question. We did so receive and expend for legitimate purposes. We erred in making the payment to you in an objectionable form. We now pay our just and lawful debt by cancelling the bank-notes issued by us, and delivering to you obligations in the form of bonds, to which form there is no legal objection.'" See, also, Hitchcock *v.* Galveston, 96 U. S. 350; Nashville *v.* Ray, 19 Wall. 468; Police Jury *v.* Britton, 15 Wall. 570; Mullarky *v.* Cedar Falls, 19 Iowa, 24; Sykes *v.* Lafferry, 27 Ark. 407; Wright *v.* Hughes, 13 Ind. 113. See also the cases cited *post,* sec. 487, note. Where a city borrowed money of a bank upon its note at usurious interest, and the bank had subsequently cancelled the illegal note, had refunded the excessive interest, and received a new note for a lawful amount, the new note is valid. Miller *v.* Hull, 4 Denio (N. Y.), 104; Kent *v.* Walton, 7 Wend. (N. Y.) 256. So it has been held that where the consideration of a contract declared void by statute is morally good, a repeal of the statute will validate the contract. Washburn *v.* Franklin, 35 Barb. (N. Y.) 599; 13 Abb. P. R. 140, same case. *Infra,* sec. 487, note.

[2] People *v.* Weber, 89 Ill. 347; Bryan *v.* Page, 51 Tex. 532, approving text; Francis *v.* Troy, 74 N. Y. 338; State *v.* Passaic, 41 N. J. L. 90; Perrine *v.* Farr, 2 Zabr. (22 N. J. L.) 356; Carron *v.* Martin, 2 Dutch. (N. J.) 594; State *v.* Hudson, 5 Dutch. (N. J.) 104; State *v.* Marion County, 21 Kan. 419; Garvey, *In re,* 77 N. Y. 523; Smith *v.* Newburgh, 77 N. Y. 130; Allen *v.* Galveston, 51 Tex. 302; Dore *v.* Milwaukee, 42 Wis. 18; Butler *v.* Nevin, 88 Ill. 575; Kansas City *v.* Flanagan, 69 Mo. 22; Bentley *v.* County Comm'rs, 25 Minn. 259; Fulton *v.* Lincoln, 9 Neb. 358; Hurford *v.* Omaha, 4 Neb. 350; Reis *v.* Graff, 51 Cal. 86; Addis *v.* Pittsburgh, 85 Pa. St. 379; McDonald *v.* Mayor, &c. of New York, 68 N. Y. 23 (1876); s. c. 23 Am. Rep. 144; Leavenworth *v.* Rankin, 2 Kan. 357; McCoy *v.* Brant, 53 Cal. 247, approving text; Murphy *v.* Louisville, 9 Bush (Ky.), 189 (1872); *post,* sec. 481, note; Montgomery County *v.* Barber, 45 Ala. 237; Terre Haute *v.* Lake, 43 Ind. 480; Head *v.* Prov. Ins. Co., 2 Cranch, 127 (1804). White *v.* New Orleans, 15 La. An. 667; *infra,* sec. 466; Dey *v.* Jersey City, 19 N. J. Eq. 412 (1869); Baltimore *v.* Reynolds, 20 Md. 1; Town of Durango *v.* Pennington, 8 Col. 257; Worthington *v.* Covington, 82 Ky. 265; Laycock *v.* Baton Rouge, 35 La. An. 475; North Pac. L. & M. Co. *v.* E. Portland, 14 Oreg. 3; Los Angeles Gas Co. *v.* Toberman, 61 Cal. 199. Speaking of this subject in a case above cited, *Marshall,* C. J., says: "The act of incorporation is to them an enabling act; it gives them all the power they possess; it enables them to contract, and *when it prescribes to them a mode of contracting,* they must observe that mode, or the instrument no more creates a contract than if the body had never been incorporated." Approved, Bank of United States *v.* Dandridge, 12 Wheat. 64, 68 (1827); see, also, Angell & Ames Corp. sec. 253; Diggle *v.* Railway Co., 5 Exch. 442; Homersham *v.* Wolv., &c. Co., 4 Eng. Law & Eq. 426; Frend *v.* Dennett, 4 C. B. (N. S.) 576; Butler *v.* Charlestown, 7 Gray (Mass.), 12; Trustees *v.* Cherry, 8 Ohio St. 564 (1858); Bladen *v.* Philadelphia, 60 Pa. St. 464; McCracken *v.* San Francisco, 16 Cal. 591; Pimental *v.* San Francisco, 21 Cal. 351; Zottman *v.* San Francisco, 20 Cal. 96; Argenti *v.* San Francisco, 16 Cal. 255, 282, opinion of *Field,* C. J.; *post,* chapter on Taxation and Local Assessments. If a corporation sue upon a contract though it be executory on their part, and not executed, this amounts to a conclusive admission that the contract was duly entered into by them. Grant on Corp. 63; 5 Man. & G., 192. A contract by a city with a street railway company held not concluded, something remaining to be done. People's Pass. R. Co. *v.* Memphis City R. Co., 10 Wall. 38. Where a charter limits the exercise of power the mayor and council cannot, in a different mode, make a valid contract, nor can they, by any subsequent approval or conduct, impart validity to such contract, nor would the law imply any such contract: the law never implies an obligation to do that which it forbids the party to agree to do. Bryan *v.* Page, 51 Tex. 532; s. p. Francis *v.* Troy, 74 N. Y. 338. In the absence of proof of bad faith, or of a usurpation of authority, or that a public loss or private injustice will result from a contract made by a municipal council without complying strictly with charter provisions, the *State* will not be warranted in interfering to set it aside. Attorney-General *v.* Detroit, 55 Mich. 181.

[1] Kelley *v.* Mayor, &c. of Brooklyn, 4 Hill (N. Y.), 263 (1843); see Neiffer *v.* Bank, 1 Head (Tenn.), 162; Pennington *v.* Taniere, 12 Q. B. 998, 1013; Maddox *v.* Graham, 2 Met. (Ky.) 56; *ante,* sec. 291. Under charter, executory contracts for grading, &c., must be in writing. Starkey *v.* Minneapolis, 19 Minn. 203 (1872).

provisions on this subject as directory. Thus, where the charter directed the mode in which moneys should be drawn from the treasury to be by an *order* of the council, signed by the mayor, such an order, issued upon a memorandum in the minutes of the corporation, without a formal order being entered, was adjudged a sufficient compliance with the charter.[1] But unless the mode be prescribed and limited, valid contracts within the scope of the corporate powers may be made, as we shall see, otherwise than under seal or in writing. A contract with a municipal corporation, which by its terms is not to be performed within one year

from the making thereof, is within the statute of frauds; but an entry in the official minutes of the corporation of a resolution passed by the governing body expressing the terms of the contract, signed by the clerk, constitutes a note or memorandum in writing sufficient to take the case out of the statute and to bind the corporation.[1]

§ 450 (374). **Seal not Necessary; How concluded.** — Modern decisions have established the law to be, that the contracts of municipal corporations *need not be under seal* unless the charter or other legislative enactment so requires.[2] The authorized body of a municipal corporation *may bind it by an ordinance*, which in favor of private persons interested therein may, if so intended, operate *as a contract*;[3] or they may bind it by a *resolution*, or by *vote* clothe its officers, agents, or committees, with power to act for it; and a contract made by persons thus appointed by the corporation, though by parol (unless it be one which the law requires to be in writing), will bind it.[4]

[1] Argus Co. *v.* Albany, 55 N. Y. 495 (1874), *Grover* and *Rapallo*, JJ., dissenting. Municipal corporations may contract by parol through their duly authorized agents, and such contracts cannot be changed without the consent of the parties to be affected thereby. Duncombe *v.* The City of Fort Dodge, 38 Iowa, 281 (1874).

[2] Draper *v.* Springport, 104 U. S. 501; Halbut *v.* Forrest City, 34 Ark. 246. A written proposal by a town to have work done, a written bid to do it and a written acceptance of the bid, held to constitute together a sufficient contract. Wiles *v.* Hoss, 114 Ind. 371 (1887).

[3] The obligation of a contract, made by an ordinance, cannot be impaired by a *subsequent ordinance*, though it be authorized by a new city charter. *Ante*, sec. 314. So where the revenues of a market were, by ordinance, appropriated to pay municipal bonds, a later ordinance passed under a power granted by a new charter, diverting the revenues, was declared void. Fazende *v.* Houston, 34 Fed. Rep. 95. *Ante*, sec. 314, as to repeal; and chaps. iv. and vii., *passim*, as to extent of legislative power over Municipal Corporations.

[4] Fanning *v.* Gregoire, 16 How. (U. S.) 524 (1853); *ante*, sec. 192; Abbey *v.* Billups, 35 Miss. 618; Alton *v.* Mulledy, 21 Ill. 76 (1859); Western Sav. F. Soc. *v.* Philadelphia, 31 Pa. St. 175; *Ib.* 185; Clark *v.* Washington, 12 Wheat. 40 (1827); Hamilton *v.* Newcastle & D. R. Co., 9 Ind. 359; Ross *v.* Madison, 1 Ind. 281 (1848); Bellmyer *v.* Marshalltown, 44 Iowa, 564 (1876); Chattanooga *v.* Geiler, 13 Lea, 611; where a contract is accepted unconditionally by the resolution of a city council the proceedings by which the resolution was adopted are presumed to be regular. Over *v.* Greenfield, 107 Ind. 231. Not essential that vote of directors appear on the record. Story Agency, sec. 52, where it is said that, "as the appointment of an agent of a corporation may not always be evidenced by written vote, it is now the settled doctrine — at least in America — that it may be inferred and implied from the adoption or recognition of the acts of the agent by the corporation." *Post*, sec. 459. And when this is the case an action of assumpsit lies against such corporation upon an express or implied promise. *Post*, sec. 459. *Parol contract* by council with city physician. Selma *v.* Mullen, 46 Ala. 411 (1871). See also, Broom Com. on Com. Law, 561-570; Montgomery Co. *v.* Barber, 45 Ala. 237 (1877).

In Fleckner *v.* United States Bank, 8 Wheat. (U. S.) 338, 357 (1823), it was urged that a corporation could not authorize any act to be done by an agent by a mere vote of the directors, but *only* by an appointment *under its corporate seal*. But the court declared that such a doctrine, whatever may have been its original correctness as applied to common-law corporations, had "no application to modern corporations created by statute, whose charters contemplate the business of the corporation to be transacted by a special body or board of directors. And the acts of such a body or board, evidenced by a written vote, are as completely binding upon the corporation, and as complete authority to their agents, as the utmost solemn acts done under the corporate seal." *Per Story*, J. Further, as to common seal, see *ante*, sec. 190. Authority of agent, in absence of special restriction, may be given by parol or inferred from acts. Detroit *v.* Jackson, 1 Doug. (Mich.) 106. See *ante*, sec. 190; *infra*, sec. 459.

A provision in the organic act of a city, that "on the passage of every by-law or order to enter into a contract by the council, *the ayes and nays* shall be called and recorded," prescribes how the *order to contract* shall be made and evidenced when directed by the council, but it is not a limitation on the power of authorized agents to make a contract *by parol*. Indianola *v.* Jones, 29 Iowa, 282 (1870); *ante*, sec. 291; Baker *v.* Johnson Co. (parol contract), 33 Iowa, 151.

Contract may be *concluded by ordinance* or action of the council (accepting proposals), without signature by parties. People *v.* San Francisco, 27 Cal. 655 (1865); Sacramento *v.* Kirk, 7 Cal. 419; Logansport *v.* Blakemore, 17 Ind. 318. How shown. San Antonio *v.* Lewis, 9 Texas, 69. In Indianapolis *v.* Skeen, 17 Ind. 628 (1861), it was held that third persons dealing with an agent of the city appointed by the council "*to negotiate its bonds* at not less than" a specified rate, were not obliged to look to the records of the council for either his appointment or his instructions, since they were not necessarily of record there; but persons dealing with such an agent are, of course, bound to ascertain the fact of his appointment and the *extent of his authority*, but not his *private instructions*. Authority of agent to *negotiate sales of bonds*. Cady *v.* Watertown, 18 Wis. 322.

§ 451 (375). **Mode of exercising Power.** — The *assent* of a municipal corporation *to the variation or modification of a contract* need not necessarily be expressed by the formal action or resolution of the common council; but it may be *implied from acts* relating to the contract work subsequent to the date of the contract;[1] but

[1] Messenger *v.* Buffalo, 21 N. Y. 196 (1860). Where certain work is stipulated to be done under the direction of a street commissioner of a city, this officer has authority, without a vote of the council, to authorize *extra work* to be done, or materials to be furnished, where these are rendered necessary by the action of the city authorities subsequent to the making of the contract, and where, without such extra work or materials, it would be impossible to fulfil the requirements of the contract. *Ib.* Modification of contracts by unauthorized officers not binding upon the corporation. Bonesteel *v.* Mayor, &c. of New York, 22 N. Y. 162 (1860); Hague *v.* Philadelphia, 48 Pa. St. 527; O'Hara *v.* New Orleans, 30 La. An. pt. 1, 152. As to changes in contracts *by parol*, see Hasbrouck *v.* Milwaukee, 21 Wis. 217 (1866); compare Sacramento *v.* Kirk, 7 Cal. 419; *infra*, sec. 459. Acceptance by city of proposals to it, see Springfield *v.* Harris, 107 Mass. 532 (1871). Where a city made a contract with a gas company for a year, and continued to observe its terms in subsequent years without renewing it, and then made a new contract for a year, which was likewise observed in later years without being formally renewed, it was held that the city was under an *implied obligation* to pay for gas for an entire year, when it had accepted gas for a considerable portion of that year. Taylor *v.* Lambertville, 43 N. J. Eq. (16 Stew.) 107.

Defendant's council passed a resolution ordering a public square to be graded, and plaintiff, under an agreement with defend-

where the contract is made by ordinance in the prescribed statutory mode, it can only be repealed or annulled in the same manner.[1]

§ 452 (376). **Contracts made by Agents; Mode of Execution.** — Where officers or agents of a corporation, duly appointed, and acting within the scope of their authority,[2] in executing an instrument in behalf of the corporation *sign their own names and affix their own seals*, such seals are simply nugatory, and the instrument, according to the weight of modern judicial opinion, is to be regarded as the *simple contract of the corporation*, and will bind the corporation and not the individuals executing it, where the purpose to act for the corporation is manifest from the whole paper, and where there are no words evincing an intention to assume a personal liability.[3]

ant's officers, advanced the money for the work, which was done in a satisfactory manner. *Held*, that a subsequent resolution, of which plaintiff had no notice, limiting the expenditure, would not defeat recovery of an amount expended in excess of that limit. Duncombe *v.* Fort Dodge, 38 Iowa, 281 (1874).

[1] Terre Haute *v.* Lake, 43 Ind. 480 (1873); see also North Pacific L. & M. Co. *v.* East Portland, 14 Oreg. 3.

[2] "The general rule is unquestionable that a municipal corporation is not bound by the unauthorized act of an individual, whether an officer of the corporation or a mere private person. But the corporation *may so deal with third persons* as to justify them in assuming the existence of an authority in another which in fact has never been given." *Andrews*, J. Davies *v.* Mayor, &c. of New York, 93 N. Y. 250. This principle, it is supposed, would not be applicable where the matter so dealt with was under all circumstances *ultra vires* the corporate power. Where a committee was empowered to contract for the erection of a building at a price *not to exceed a specified sum*, it was held they had no power to contract for a larger sum, and that the person contracting with them was bound to take notice of the extent of their power. Turney *v.* Town of Bridgeport, 55 Conn. 412.

[3] Regents, &c. *v.* Detroit, &c., 12 Mich. 138; Sweetzer *v.* Mead, 5 Mich. 107; Bank of Metropolis *v.* Gottschalk, 14 Pet. 19; Story Agency, secs. 154, 260, 276, 277; Bank of Columbia *v.* Patterson, 7 Cranch, 299, 307; Hatch *v.* Barr, 1 Ham. (Ohio) 390; Baker *v.* Chambles, 4 G. Greene (Iowa), 428; Lyon *v.* Adamson, 7 Iowa, 509; 1 Am. Lead. Cas. 602; Mott *v.* Hicks, 1 Cow. (N. Y.) 513, 534; Blanchard *v.* Blackstone, 102 Mass. 343; Stanton *v.* Camp (contract signed individually with addition of "committee"), 4 Barb. (N. Y.) 274; Mechanics' Bank *v.* Bank of Columbia, 5 Wheat. 326; Hopkins *v.* Mehaffy, 11 Serg. & Rawle (Pa.), 126; Angell & Ames, secs. 293, 295; Gale *v.* Kalamazoo, 23 Mich. 344 (1871); Burrill *v.* Boston, 2 Clifford C. C. 590 (1867). To justify the setting aside of a contract made by an agent of a municipal corporation on the ground of fraud, the fraud must be clearly proved: circumstantial evidence, if relied upon, must be such as is not fairly reconcilable with any other theory than one of fraud by the agent. Baird *v.* Mayor, &c. of New York, 96 N. Y. 567. Where a town clothes its agent, or its committee, with *full power to make a contract*, and it is accordingly made, it is valid and binding, notwithstanding there has been *no formal acceptance* by a vote, or even if it be afterwards rejected by the corporation. Davenport *v.* Hallowell, 10 Me. 317; Junkins *v.* School District, 39 Me. 220 (1855); Willard *v.* Newburyport, 12 Pick. (Mass.) 227; Kingsbury *v.* School District, 12 Met. (Mass.) 99 (1846).

The *selectmen of towns* in *Massachusetts* have no authority to construct a way and pledge the credit of the town therefor, unless they are authorized by a vote of the

§ 453 (377). **Same subject. Illustrations.** — A few cases will be referred to, *illustrating the rule* just stated. A contract in relation to the survey of a city, a subject exclusively appertaining to the corporation, was entered into "between T. Van V., J. W., C. D. C., a committee appointed by the corporation of the city of Albany for that purpose, of the first part, and John R., Jr., of the second part." The parties of the first part agreed to pay for the work to be done, and signed their individual *names* and affixed their individual *seals* to the agreement. The authority of the committee to act for the corporation and to make the contract being conceded, it was ruled that they were not personally liable, and that it must be enforced by and against the corporation.[1] In another case, a contract for the

town. Bean *v.* Hyde Park, 143 Mass. 245.

Where *school directors* gave an authorized bond for borrowed money, in their individual names, *as* school directors, though signed and sealed in their individual names, the corporation, and not the individuals, are liable thereon. Heidelberg School Dist. *v.* Horst, 62 Pa. St. 301 (1869).

The *power of a committee*, appointed by a vote of a town in *Massachusetts* "to let out and superintend the making" of a highway, is completely executed by the making of a contract with a third person embracing the whole subject-matter of the vote, and by the superintending of the construction of the highway. And therefore, if the person contracted with fails to complete the road according to his contract, this is a matter for the *town* to deal with, and the committee have no power, without new authority from the town, to enter into a contract with another person for its completion. If they do so, and pay money in pursuance thereof, the town is not liable to them therefor. Nor is it liable if they transcend their power, and make a contract for a more expensive road than they were authorized to do. Keyes *v.* Westford, 17 Pick. (Mass.) 273 (1835). Power of New England *towns*, *ante*, secs. 29, 30; *post*, sec. 961.

Power to a *town committee* "to superintend the building of a house for the town," was adjudged to include the power to make the necessary contracts, it not appearing that any other or special committee or agent was appointed for that purpose, the court being of opinion that the making of contracts was essential to the building of the house. Damon *v.* Granby, 2 Pick. (Mass.) 345 (1824); *ante* chaps. ix., x. *Majority of committee must sign contract.* So held, Curtis *v.* Portland, 59 Me. 483 (1871); *ante*, sec. 283, and note, as to powers of a majority of committee; *post*, sec. 455, note.

It has been held in *Upper Canada*, where work was done under a contract not made with the corporation, or any of its known officers, but merely with persons assuming to act as a duly appointed committee, that no action would lie against the corporation. Stoneburgh *v.* The Municipality of Brighton, 5 Upper Can. Law J. 38. No action can be sustained for a breach of duty against the head of a corporation in not applying the seal to make a contract between a corporation and an individual, founded on a refusal which, if there had been a previous valid contract, would have constituted a breach of it; in other words, there cannot be a remedy against the head of a corporation, equivalent to a remedy on the contract against the corporation, had the contract been duly made so as to create a valid and binding agreement. Fair *v.* Moore, 3 Upper Can. C. P. 484; Harrison Munic. Manual for Upper Can. (5th ed.) p. 12.

[1] Randall *v.* Van Vechten, 19 Johns. (N. Y.) 60 (1821); compare, however, Fullam *v.* Brookfield, 9 Allen (Mass.), 1 (1864), where the court denies the doctrine of Randall *v.* Van Vechten; Bank, &c. *v.* Patterson, 7 Cranch, 299, and certain *dicta* in Damon *v.* Granby, 2 Pick. (Mass.) 345.

repair of an engine house of a city was entered into by the inspector of the fire department in his own name, describing himself as "G. N. S., inspector, &c., of the first part," and signed in the same way. It was, in fact, made for and on account of the city, and it was held that the city was liable thereon, although its agent did not use its name in contracting, the court being of opinion, however, that the contract on its face showed it was made for the city.[1]

§ 454 (378). **Same subject. Illustration.** — So, where on a sale of real property by a corporation, a memorandum of the sale was signed by the parties, on which it was stated that the sale was made to A. B., the purchaser, and that he, C. D., "mayor of the corporation, in behalf of himself and the rest of the burgesses and commonalty of the borough of Caermarthen, do mutually agree to perform and fulfil, on each of their parts respectively, the conditions of the sale," and then came the signature of the purchaser, and of "C. D., Mayor," it was held that the agreement *was that of the corporation, and not that of the mayor personally;* and that, consequently, the mayor could not sue thereon.[2]

But the text states the prevailing American rule. See also Dubois *v.* Canal Co. 4 Wend. (N. Y.) 285; Worrell *v.* Munn, 1 Seld. (5 N. Y.) 229; Ford *v.* Williams, 3 Kern. (13 N. Y.) 577, 585; Richardson *v.* Scott, &c. Co., 22 Cal. 150.

[1] Robinson *v.* St. Louis, 28 Mo. 488 (1859). Where the corporate name of a village was "the president and trustees of the village of G," a contract reciting that it was made by the president and trustees of the "corporation" of G ——, *held*, to warrant a finding that the contract was made by the board officially. Parr *v.* Greenbush, 72 N. Y. 463. In 1870 a village board, without advertising for proposals, contracted with P. to lay a sidewalk in May, 1871; the work, however, did not proceed, owing to the failure of the board to furnish the gravel and grading, as required by the contract and P.'s notification. In 1873 the board passed a resolution requiring P. to go on, and if the necessary gravel and grading be not furnished, to furnish the same himself; whereupon he furnished the materials and did the work. In 1871 the village charter was so amended as to require the board to advertise for proposals for grading and paving any sidewalk, and to award any contract therefor to the lowest bidder. In an action by P. for labor and materials, in pursuance of the resolution, &c.— *Held*, 1. That no abandonment of the contract was established. 2. That the contract was not affected by the subsequent amendment. 3. That the resolution was illegal, and no recovery could be had by P. for the gravel and grading, either upon contract or upon the *quantum meruit*. *Ib.* Where A., B., and C., a committee appointed by a meeting of citizens, make a contract with D., signing the contract as a committee, and affixing their seals thereto, they make themselves personally liable under the contract. The only effect of the word "committee" is like that of "executor" in a personal obligation, to identify the transaction, not to qualify the act. Ulam *v.* Boyd, 87 Pa. St. 477.

[2] Bowen *v.* Morris, 2 Taunt. 374, 387. The case of Burrill *v.* Boston, 2 Clifford C. R. R. 590 (1867), presents also an instance in which it was considered that a contract signed by the mayor was one intended to be made on behalf of the corporation. But in Providence *v.* Miller, 11 R. I. 272 (1876); s. c. 23 Am. Rep. 453, a contract under seal between certain

§ 455 (379). **Action must be Corporate, not Individual.** — But the action or contract of the officers of a public corporation in their *individual capacity* is not binding upon the corporate body.[1] For example: If the *selectmen of a town* in New England, as *individuals*, request a citizen to furnish supplies to a public enemy, to prevent violence to the town, this gives no legal right of recovery against the town; and as the transaction was wholly beyond the official duty of selectmen, or the duty of the town as a corporation, it was doubted whether a regular vote to pay the plaintiff would have been legal, though it was admitted that a voluntary agreement among the *inhabitants* to this effect would have been binding, being founded on a meritorious consideration, as it was *their* property, and not that of the town, which was in danger.[2]

§ 456 (380). **Specialty Contracts.** — While the agent of a public corporation, who by its vote or authority contracts for its use, cannot bind the corporation by *making a contract by deed*, yet if such agent had authority to make the contract, it is binding upon the corporation as *evidence* of such contract. It follows that a contract of an agent or committee of a town, under his or their own seals, cannot be declared on, *in covenant or debt*, as the deed of the town. The *form of the remedy* against the town[3] is for damages, or in

persons of the first part and one Doyle "in behalf of the city," party of the second part, Doyle being the mayor, and the contract relating to municipal matters, was held upon its face to be the contract of Doyle personally, and not that of the city.

[1] Haliburton *v.* Frankford, 14 Mass. 214 (1817); Butler *v.* Charlestown, 7 Gray (Mass.), 12 (1856).

[2] Haliburton *v.* Frankford, *supra;* Stetson *v.* Kempton, 13 Mass. 272 (1816); Burrill *v.* Boston, 2 Clifford C. C. R. 590 (1867); *ante*, sec. 30. A majority of selectmen may, by statute, bind a town in *New Hampshire* by their written contract when acting within the limits of their authority. But a contract signed by one only of the selectmen in his own name, "for the selectmen," does not bind the town, nor will it be rendered valid by proof that another selectman authorized him so to sign the contract, or by proof that such was the practice in the town. If the *corporate name* had been affixed by one, such proof might have been sufficient. Andover *v.* Grafton, 7 N. H. 298, 305; Mason *v.* Bristol, 10 N. H. 36; Hanover *v.* Eaton, 3 N. H. 38. Powers of towns in *New England*. *Ante*, secs. 29, 30; *supra*, sec. 452, note.

Contracts made by a *majority of the board of aldermen*, without any *official action* of the city council, are not binding upon the city; so decided where counsel were thus employed who rendered legal services beneficial to the corporation. Butler *v.* Charlestown, 7 Gray (Mass.), 12 (1856); see, also, Sikes *v.* Hatfield, 13 Gray (Mass.), 347 (1859); see chapter on Corporate Meetings, *ante*. A contract entered into by a board of supervisors, for and on behalf of the county, and signed by the chairman of the board, is the contract of the county. Babcock *v.* Goodrich, 47 Cal. 488 (1874).

[3] Randall *v.* Van Vechten, 19 Johns. (N. Y.) 60, 65 (1821); Damon *v.* Granby 2 Pick. (Mass.), 345 (1824); compare Fullam *v.* Brookfield, 9 Allen (Mass.), 1; Bank of Columbia *v.* Patterson's Administrator, 7 Cranch, 299, and rule as stated by *Story*, J., 306 (1813); Clark *v.* Cuck-