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-

assumpsit. Although in Damon *v.* Granby[1] it was left an open question whether a vote of a town having no corporate seal, expressly authorizing an agent to make a deed of land, or other contract, *under seal*, would, if executed according to the power, become technically the deed of the town, no substantial reason is perceived why such an instrument, thus executed, should not be treated as having all the attributes and qualities of a sealed instrument. If the corporation, however, has a common seal, which is the case with towns in many of the States, and with cities generally, and it is affixed to an instrument in pursuance of the vote of the corporation, or by the proper officer, such an instrument is, beyond doubt, technically *the deed of the corporation*.[2]

§ 457 (381). **Contracts in Excess of Corporate Power; Ultra Vires as a Defence.** — The general principle of law is settled beyond controversy, that the agents, officers, or even city council of a municipal corporation, *cannot bind the corporation* by any contract which is *beyond the scope of its powers*, or entirely *foreign* to the purposes of the corporation, or which (not being legislatively authorized) is against public policy. This doctrine grows out of the nature of such institutions, and rests upon reasonable and solid grounds. The inhabitants are the corporators; the officers are but the public agents of the corporation.[3] The duties and powers of the officers or public agents of the corporation are prescribed by statute or charter, which all persons not only may know, but are bound to know. The opposite doctrine would be fraught with such danger and accompanied with such abuse that it would soon end in the ruin of municipalities, or be legislatively overthrown. These considerations vindicate both the reasonableness and necessity of the rule that the corporation is bound only when its agents or officers, by whom it can alone act, if it acts at all, keep within the limits of

field Union, 11 Eng. Law and Eq. 442; Pennington *v.* Taniere, 12 Queen's B. 1011. *Covenant* cannot be maintained against a city on a contract with the water commissioners of the city, although the statute declares that their contracts should be binding upon and be considered as done by the mayor and council. Keeney *v.* Hudson, 3 Dutch. (N. J.) 362; *ante*, sec. 192; Providence *v.* Miller, 11 R. I. 272; s. c. 23 Am. Rep. 453.

[1] Damon *v.* Granby, 2 Pick. (Mass.) 345, 352 (1824).

[2] *Ib.*; Randall *v.* Van Vechten, 19 Johns. (N. Y.) 60, 65 (1821). But see Fullam *v.* Brookfield, 9 Allen (Mass.), 1. *Corporate seal*. *Ante*, secs. 190, 192; Neely *v.* Yorkville, 10 S. C. 141, approving text. An agreement in writing by an attorney to refer a certain cause acted on by the court was held to bind his client. Brooks *v.* New Durham, 55 N. H. 559 (1875).

[3] Halbut *v.* Forrest City, 34 Ark. 246; Oubre *v.* Donaldsonville, 33 La. An. 386; Pugh *v.* Little Rock, 35 Ark. 75 (approving text), where an ordinance authorizing the issue of certificates of indebtedness at a discount was held not admissible as evidence against the city.

the chartered authority of the corporation.[1] The history of the workings of municipal bodies has demonstrated the salutary nature of this principle, and that it is the part of true wisdom to keep the corporate wings clipped down to the lawful standard.[2] It results from this doctrine that contracts not authorized by the charter or by other legislative act, that is, not within the scope of the powers of the corporation under any circumstances, are void, and in actions thereon the corporation may successfully interpose the plea of *ultra vires*, setting up as a defence its own want of power under its charter or constituent statute to enter into the contract.[3] In favor

[1] Text approved. City of Eufala *v.* McNab, 67 Ala. 588; Fort Wayne *v.* Lehr, 88 Ind. 62; Pine Civil Township *v.* Huber Manuf. Co., 83 Ind. 121; Cowdrey *v.* Caneadea, 16 Fed. Rep. 532.

[2] This subject is touched upon in the concluding portion of chap. i., *ante*. Principle of *construction of corporate powers*. *Ante*, secs. 89–92. See also *ante*, sec. 447. Lyddy *v.* Long Island City, 104 N. Y. 218 (contractor chargeable with notice of limitations upon agent's authority); Appeal of Whelen, 108 Pa. St. 162.

[3] *Post*, chap. xxiii., sec. 935, where the subject of *ultra vires* is further considered; and see also the following cases: Cheeney *v.* Brookfield, 60 Mo. 53 (1875), citing text; Marsh *v.* Fulton County, 10 Wall. 676 (1870); Thomas *v.* Richmond, 12 Wall. 349 (1870); Bridgeport *v.* Housatonuc Railroad Co., 15 Conn. 475, 493 (1843); Burrill *v.* Boston, 2 Clifford C. C. 590 (1867); Martin *v.* Brooklyn, 1 Hill, 545; Norwich Overseers, &c. *v.* New Berlin, &c., 18 Johns. 382; Donovan *v.* New York, 33 N. Y. 291; Seibrecht *v.* New Orleans, 12 La. An. 496 (1857); Clark *v.* Des Moines, 19 Iowa, 199, 209 (1865); Loker *v.* Brookline, 13 Pick. (Mass.) 343, 348; Philadelphia *v.* Flanigen, 47 Pa. St. 21; Paris Tp. Tr. *v.* Cherry, 8 O. St. 564; Hague *v.* Philadelphia, 48 Pa. St. 527; Albany *v.* Cunliff, 2 Comst. (2 N. Y.) 165 (1849), reversing s. c. 2 Barb. 190; Cuyler *v.* Rochester, 12 Wend. (N. Y.) 165 (1834); Hodges *v.* Buffalo, 2 Denio (N. Y.) 110 (1846); Halstead *v.* New York, 3 N. Y. 430 (1850); Martin *v.* Mayor, 1 Hill (N. Y.), 545; Boom *v.* Utica, 2 Barb. (N. Y.) 104; Cornell *v.* Guilford, 1 Denio (N. Y.), 510; Boyland *v.* Mayor, &c., of New York, 1 Sandf. (N. Y.) 27 (1847); Dill *v.* Wareham, 7 Met. (Mass.) 438 (1844); Vincent *v.* Nantucket, 12 Cush. (Mass.) 103, 105 (1858), *per Merrick*, J.; Stetson *v.* Kempton, 13 Mass. 272; Parsons *v.* Inhabitants of Goshen, 11 Pick. (Mass.) 396; Wood *v.* Lynn, 1 Allen (Mass.), 108 (1861); Spalding *v.* Lowell, 23 Pick. (Mass.) 71; Mitchell *v.* Rockland, 45 Me. 496 (1858); s. c. 41 Me. 363; Western College *v.* Cleveland, 12 Ohio, 375; Tippecanoe Co. Comm'rs *v.* Cox, 6 Ind. 403 (1855); Inhabitants *v.* Weir, 9 Ind. 224 (1857); Smead *v.* Indianapolis, P. & C. R. Co., 11 Ind. 104 (1858); Brady *v.* New York, 20 N. Y. 312; Appleby *v.* New York, 15 How. Pr. (N. Y.) 428; Estep *v.* Keokuk County, 18 Iowa, 199, and cases cited by *Cole*, J.; Clark *v.* Polk County, 19 Iowa, 248 (1865); *supra*, sec. 447; *post*, sec. 935; Perry *v.* Superior City, 23 Wis. 64 (1870); McDonald *v.* New York, 68 N. Y. 23 (1876); s. c. 23 Am. Rep. 144; Maupin *v.* Franklin Co., 67 Mo. 327; Driftwood Val. Turnp. Co. *v.* Bartholomew County Comm'rs, 72 Ind. 226; New Jersey & N. E. Tel. Co. *v.* Fire Comm'rs, 34 N. J. Eq. 117; Laycock *v.* Baton Rouge, 35 La. An. 475; Lincoln *v.* Stockton, 75 Me. 141; Earley's Appeal, 103 Pa. St. 273, where the purchase from a third party of a judgment against a creditor of a city for the purpose of setting it off against his claim was held *ultra vires* and void. Salt Lake City *v.* Hollister, 118 U. S. 256, affirming s. c. 3 Utah, 200; but, in this case the city, having engaged in the business of distilling liquors without power so to do, was held liable for the United States taxes thereon. In *Illinois* it is held that, where a municipal corporation enters into a contract which, although not expressly authorized by its charter, is not in violation of the charter or of any stat-

of *bona fide* holders of negotiable securities, the corporation may be estopped to avail itself of irregularities in the exercise of power conferred; but it may always show that under no circumstances had the corporation *power* to make a contract of the character in question. This subject has been already referred to, and will be considered in a subsequent portion of the present chapter.[1] The mere fact, however, that a city, in making a contract for a public improvement within its corporate powers, promises to make payment in negotiable bonds, which it has no power to issue, does not

ute, and has thereby induced the other party to it to expend money in the performance of his part of it, the municipal corporation may be held liable. East St. Louis *v.* East St. Louis Gas L. & C. Co., 98 Ill. 415. *Supra*, sec. 444. Corporation may defend against unauthorized contract, although its *seal* is attached to it. Leavenworth *v.* Rankin, 2 Kan. 358 (1864); *ante*, sec. 192.

Mr. Justice *Coulter*, in delivering the opinion in Alleghany City *v.* McClurkin, 14 Pa. St. 81, expresses the opinion that a municipal corporation may be liable for the contracts *ultra vires* of its officers, when these are publicly entered into with the knowledge of the people, and not objected to until after the rights of third persons have attached. Such a principle is believed to be both unsafe and unsound; the only true and safe view being that all persons are bound to take notice of the powers and authority which the law confers upon the officers of such corporations. See Loker *v.* Brookline, 13 Pick. (Mass.) 343. Any liability in such cases must, according to the present weight of authority, be independent of the contract, and cannot be asserted in an action based upon the contract to enforce its executory provisions. *Supra*, sec. 444. Auditing and paying *part* of a claim presented, accompanied with a denial of liability for the residue, does not estop the corporation from contesting the residue, even though it be upon grounds which show the former allowance to have been improper. People *v.* N. Y. Sup., 1 Hill (N. Y.), 362 (1841). In an action on a contract for doing work which a municipal corporation had the power to make, it is no defence that the city ought to have adopted some less expensive means of accomplishing the purpose in view. Livingston *v.* Pippin, 31 Ala. 542 (1858).

The case of The State *v.* Buffalo, 2 Hill (N. Y.) 434, determines an interesting point. Arms belonging to the State were loaned to the city authorities to suppress disorderly assemblages. The keeper of the arsenal had no right to make the loan, but it was made in good faith, and the bond of the city taken for their return on demand. The city being sued on this bond made the point that it was void for illegality; but the court regarded it rather as a *bona fide* excess of authority simply, and held that though the loan was unauthorized the State might waive the tort committed on the property and seek a remedy upon the bond. See *infra*, sec. 458, and note.

The power of State building commissioners to discharge at their discretion the building superintendent whom they employ is vested in them for the public benefit, and they cannot be divested of that power by any contract entered into by them with the person so employed, where such contract is not *ratified* by the legislature. If the legislature, with full knowledge of the contract entered into by the commissioners with the plaintiff, and of all the facts relating thereto, recognizes and acts upon it, making appropriations to complete the building in question upon its assumed validity, that will constitute a *ratification* of the contract; but such ratification can be shown only by some action of both houses by statute or resolution. Shipman *v.* The State, 43 Wis. 381 (1877).

[1] *Ante*, sec. 163; *infra*, secs. 511–553; Moore *v.* New York, 73 N. Y. 238, approving text.

make the entire contract *ultra vires;* and therefore if work be done under such contract the city will be liable therefor.[1]

[1] Hitchcock *v.* Galveston, 96 U. S. 341(1877). In this case the city made a contract with the plaintiffs to pave streets. It had the power to make a valid contract for this purpose: but the city having in the contract agreed to make payment for the work in negotiable city bonds payable at a future day, it was objected that, since no express power was given to issue bonds for this purpose, the whole contract was therefore inoperative and void; and the lower court so decided, and its ruling was supposed to be supported by the cases of Tenzas Parish Police Jury *v.* Britton, 15 Wall. 570, and Memphis *v.* Ray, 19 Wall. 468. [See *ante*, secs. 117–126.] But the Supreme Court held otherwise, and in giving its judgment on this point, Mr. Justice *Strong* observed: "In the view which we shall take of the present case, it is perhaps not necessary to inquire whether those cases justify the court's conclusion; for if it were conceded that the city had no lawful authority to issue the bonds described in the ordinance and mentioned in the contract, it does not follow that the contract was wholly illegal and void, or that the plaintiffs have no rights under it. They are not suing upon the bonds, and it is not necessary to their success that they should assert the validity of those instruments. It is enough for them that the city council have power to enter into a contract for the improvement of the sidewalks; that such a contract was made with them; that under it they have proceeded to furnish materials and do work, as well as to assume liabilities; that the city has received and now enjoys the benefit of what they have done and furnished; that for these things the city promised to pay; and that after having received the benefit of the contract the city has broken it. It matters not that the promise was to pay in a manner not authorized by law. If payments cannot be made in bonds because their issue is *ultra vires*, it would be sanctioning rank injustice to hold that payment need not be made at all. Such is not the law. The contract between the parties is in force so far as it is lawful. There may be a difference between the case of an engagement made by a corporation to do an act expressly prohibited by its charter, or some other law, and a case of where legislative power to do the act has not been granted. Such a distinction is asserted in some decisions. But the present is not a case in which the issue of the bonds was prohibited by any statute. At most, the issue was unauthorized; at most, there was a defect of power. The promise to give bonds to the plaintiffs in payment of what they undertook to do was, therefore, at farthest, only *ultra vires;* and in such a case, though specific performance of an engagement to do a thing transgressive of its corporate power may not be enforced, the corporation can be held liable on its contract. Having received benefits at the expense of the other contracting party, it cannot object that it was not empowered to perform what it promised in return, in the mode in which it promised to perform. This was directly ruled in The State Board of Agriculture *v.* The Citizens' Street Railway Co., 47 Ind. 407. There it was held that 'although there may be a defect of power in a corporation to make a contract, yet if a contract made by it is not in violation of its charter, or of any statute prohibiting it, and the corporation has by its promise induced a party relying on the promise and in execution of the contract to expend money, and perform his part thereof, the corporation is liable *on the contract*.' See, also, substantially to the same effect, Alleghany City *v.* McClurkin, 14 Pa. St. 81; and, more or less in point, Maher *v.* Chicago, 38 Ill. 266; Oneida Bank *v.* Ontario Bank, 21 N. Y. 495; Argenti *v.* San Francisco, 16 Cal. 256; Silver Lake Bank *v.* North, 4 Johns. (N. Y.) Ch. 373." But *quære* as to the liability in such case being *on the contract*. See *ante*, secs. 89–91, 444; *post*, sec. 459, note. A charter provision that after a pavement has been laid at the expense of the abutter, "the city shall take charge of and keep the same in repair, without further assessment," is *not a contract exempting the owners* from future assessments. State *v.* Newark, 8 Vroom,

§ 458 (382). **Contracts ultra vires or invalid.**— Agreeably to the foregoing principles, a corporation cannot maintain an *action on a bond or a contract which is invalid*, as where a city, without authority, loaned its bonds to a private company, and took from it a penal bond, conditioned for the faithful application of the city bonds to payment for works which the city had no power to construct or assist in constructing.[1] The remedy in such case must be in some other form than in an action to enforce the contract. So, a contract by a city to waive its right to go on with the laying out of a street or not, as it might choose, is, it seems, against *public policy*, and it is void if it amounts to a surrender of its legislative discretion.[2] So, a promise to pay a public corporation, or its agents, a premium *for doing their duty is illegal and void;* and a contract will not be sustained which tends to restrain or control the unbiased judgment of public officers. But *a promise by individuals to pay a portion of the expenses of public improvements* does not necessarily fall within this principle, and such a promise is not void as being against public policy; and if the promisors have a peculiar and local interest in the improvement, their promise is not void for want of consideration, and may be enforced against them.[3] So, on the other hand, a party

415 (37 N. J. L.), reversing s. c. 6 Vroom, 168.

[1] City Council *v.* Plank Road Co., 31 Ala. 76 (1857). See Wetumpka *v.* Winter, 29 Ala. 651; Halstead *v.* New York, 3 N. Y. 430; s. c. 5 Barb. 218; Bridgeport *v.* Housatonuc R. Co., 15 Conn. 475, 493. But see State *v.* Buffalo, 2 Hill (N. Y.), 434, cited *supra* in note to sec. 457. Where a city having, without proper authority, guaranteed the payment of railroad bonds which were secured by a trust deed, and become the owner of the bonds from having paid them at maturity, it was held that, while the city might have successfully contested its liability on the bonds, yet the want of authority to guarantee the bonds did not affect the lien created by the deed in its favor as against other creditors of the railroad company. Hay *v.* Alexandria & W. R. Co., 20 Fed. Rep. 15. *Infra*, sec. 471, as to suretyship.

[2] Martin *v.* Mayor, &c., 1 Hill (N. Y.), 545 (1841); *ante*, sec. 97. As to *public policy*, see Ohio Life Ins. & T. Co. *v.* Merchants Ins. & T. Co., 11 Humph. (Tenn.) 1; *ante*, chap. xii.; Indianapolis *v.* Indianapolis Gas L. & C. Co., 66 Ind. 396, citing text.

Corrupt agreements with aldermen, to influence them to a particular course in the discharge of official duties, are, of course, void, no matter to whom executed. Cook *v.* Shipman, 24 Ill. 614.

Contracts with *municipal officers*. *Ante*, secs. 283, 292, 444.

[3] Townsend *v.* Hoyle, 20 Conn. 1 (1849). This case holds that a promise by the defendants to pay the city the expense of laying a certain street was binding; and *Ellsworth*, J., in delivering the opinion, said: "We cannot assent to the proposition that a promise by individuals to pay a part of the expenses of public improvements, ordered by public authority, is, of course, illegal and void. The amount or cost may properly enough enter into the question of expediency or necessity. If made in one way or in one place, it will be much better for the public, though more expensive; but individuals specially benefited stand ready, by giving their land, their money, or their labor, to meet the extra expense. Will these promises be void, as being without consideration or against public policy? We think not." See chapter on Streets, *post;* Springfield *v.* Harris, 107 Mass. 532. An arrange-

making with a city a contract which is *ultra vires* is *not estopped*, when sued thereon by the corporation for damages, to set up its want of authority to make it.[1]

§ 459 (383). **Implied Contracts.** — The present state of the authorities clearly justifies the opinion of Chancellor Kent, that corporations may be bound by *implied contracts* within the scope of their powers, to be deduced by inference from authorized corporate acts, without either a vote, or deed, or writing.[2] This doc-

ment or combination among the parties applying, whereby a few individuals, desirous of causing paving and grading to be done, *procured the signatures of others to the application by paying them a consideration therefor*, directly or indirectly, is a fraud in law and contrary to public policy. Howard *v.* The Church, 18 Md. 451. If executory, such an agreement cannot be enforced. Maguire *v.* Smock, 42 Ind. 1 (1873); s. c. 13 Am. Rep. 353. A written promise to pay into the county treasury a certain sum of money, upon the condition that the county commissioners, who had removed the county court-house from the public square, and were building a new court-house elsewhere, would remove it back to said square, which offer was accepted by said commissioners, who entered on their records an order for such relocation, was not void as against public policy, though the commissioners were not expressly authorized by statute to receive such donations. Stilson *v.* Lawrence Co., 52 Ind. 213 (1876); State *v.* Johnson's Admr., 52 Ind. 197 (1876); *post*, sec. 596.

[1] Montgomery City Council *v.* Montgomery & W. Pl. R. Co., 31 Ala. 76 (1857); Penn., Del. & Md. Steam Nav. Co. *v.* Dandridge, 8 Gill & J. (Md.) 248, 319, 320; Hodges *v.* Buffalo, 2 Denio (N. Y.), 110. If a corporation has received money in advance on a contract void on account of want of authority to make it, and afterwards refuses to fulfil the contract, the party advancing the money may, without demand, recover it back in an action for money had and received. Dill *v.* Wareham, 1 Met. (Mass.) 438 (1844). In this case the corporate defendant undertook, without authority, to transfer to the plaintiff the right of taking oysters within its limits; contract held wholly void. See also, McCracken *v.* San Francisco, 16 Cal. 591; *infra*, secs. 459, 460; compare Herzo *v.* San Francisco, 33 Cal. 134. That the contract of agents within the scope of corporate power may be ratified, or a contract implied from the enjoyment of the benefit of the consideration. San Francisco Gas Co. *v.* San Francisco, 9 Cal. 453 (1858), opinion of *Field*, J.; Backman *v.* Charlestown, 42 N. H. 125; see Bissell *v.* Railroad Co., 22 N. Y. 258; *post*, secs. 935–938.

[2] 2 Kent Com. 291; Bank of Columbia *v.* Patterson, 7 Cranch, 299 (1813) (a leading American case); Mott *v.* Hicks, 1 Cow. (N. Y.) 513; Dunn *v.* Rector, &c., 14 Johns. (N. Y.) 118; Bank of U. S. *v.* Dandridge, 12 Wheat. 74; Perkins *v.* Wash. Ins. Co., 4 Cow. (N. Y.) 645; Davenport *v.* Peoria Insurance Co., 17 Iowa, 276, and cases cited by *Cole*, J.; American Insurance Co. *v.* Oakley, 9 Paige (N. Y.), 496; Magill *v.* Kauffman, 4 Serg. & Rawle (Pa.), 317; Randall *v.* Van Vechten, 19 Johns. (N. Y.) 60; Wayne County *v.* Detroit, 17 Mich. 390; Lesley *v.* White, 1 Speers (S. C.) Law, 31; Canaan *v.* Derush, 47 N. H. 212; Lebanon *v.* Heath, *Ib.* 353; Adams *v.* Farnsworth, 15 Gray (Mass.), 423; Shrewsbury *v.* Brown, 25 Vt. 197; Gassett *v.* Andover, *Ib.* 342; Peterson *v.* Mayor, &c., of New York, 17 N. Y. 449, 453 (1858); Danforth *v.* Schoharie Turnpike Co., 12 Johns. (N. Y.) 227; Angell & Ames, sec. 237; Maher *v.* Chicago, 38 Ill. 266; Frankfort Bridge Co. *v.* Frankfort, 18 B. Mon. (Ky.) 41; Bryan *v.* Page, 51 Tex. 532; State Board *v.* Aberdeen, 56 Miss. 518, approving text; Taylor *v.* Lambertville, 43 N. J. Eq. (16 Stew.) 107 (for brief statement of facts of this case, see sec. 451, note); *supra*, sec. 450; Broom,

trine is applicable equally to public and private corporations, but in applying it, however, care must be taken not to violate other principles of law.[1] Thus it is obvious that an implied promise cannot be raised against a corporation, where by its charter it can only contract in a prescribed way, except it be a promise for money received or property appropriated under the contract.[2] So, where the corporation orders local street improvements to be made, for which the abutters

Commentaries on Com. Law, 561–570, where the English cases are collected. The reader will be interested in the letter of Mr. Justice *Story* to Mr. Justice *Coleridge* on the subject of corporate liability for the parol contracts, *intra vires*, of the authorized agents of the corporation. 2 Story's Life and Letters, 335, 337. He there adds, what is now settled law, "that all duties imposed upon a corporation by law, and all services performed at its request, raise implied promises binding on the corporation, if, of course, no statute be thereby infringed." *Ib.*

[1] Peterson *v.* Mayor, &c. of New York, 17 N. Y. 449, 453; Poultney *v.* Wells, 1 Aiken (Vt.), 180. Where a city contracted with a railroad company to do certain work, and the company employed persons to do it, there is no implied contract on the part of the city to pay them, although the city saw them at work. Alton *v.* Mulledy, 21 Ill. 76 (1859). When contracts can only be proved by the record; and when there is no implication as to contracts; and when they must appear by the records of the corporate proceedings. See Crump *v.* Colfax Co. Supervisors, 52 Miss. 107; Huntington County Comm'rs *v.* Boyle, 9 Ind. 296; Warwick *v.* Butterworth, 17 Ind. 129; St. Louis *v.* Cleland, 4 Mo. 84; Alton *v.* Mulledy, 21 Ill. 76 (1859); San Antonio *v.* Gould, 34 Tex. 76; People *v.* Fulton Co., 14 Barb. (N. Y.) 56; Bryan *v.* Page, 51 Tex. 532; Gilbert *v.* New Haven, 40 Conn. 102 (1873).

Must be an authorized request. "No person can make himself a creditor of another by voluntarily discharging a duty which belongs to that other." *Strong*, J., in Salsbury *v.* Philadelphia, 44 Pa. St. 303; Baltimore *v.* Poultney, 25 Md. 18; Jeffersonville *v.* Ferry Boat, 35 Ind. 19 (1870). In Seibrecht *v.* New Orleans, 12 La. An. 496, (1857), carpets were furnished for certain corporation courts, by order of the clerks or judges, but without any authority of the common council, and were worn out before the plaintiff presented his bill. It was contended that the city was liable *ex æquo et bono*, having used, and not returned the carpets; but it did not appear that the *council* knew that they had been purchased for the city, and were being used in its buildings. The court denied the liability, saying that "the only safe rule is to hold that the city cannot be bound for any contract made without its authorization, expressed by a resolution of the common council." That an unauthorized contract, however advantageous, does not bind the corporation, see Loker *v.* Brookline, 13 Pick. (Mass.) 343; Jones *v.* Lancaster, 4 Pick. (Mass.) 149; Wood *v.* Waterville, 5 Mass. 294.

A contract was implied on the part of a city, which was bound to support its paupers, and which had refused to pay a person who had furnished a pauper with necessaries. Seagraves *v.* Alton, 13 Ill. 371. Here it will be noticed that there was an express refusal on the part of the city to support the pauper, and yet a promise was *implied*. This implication is a pure fiction to support what the court regarded as a just claim. A contract made by one member of a committee or county board for services which are authorized to be obtained is not obligatory on the municipality. The power is vested in the whole body, and no one member can bind the corporation. Bentley *v.* Chisago Co. Comm'rs, 25 Minn. 259.

[2] McSpedon *v.* Mayor of New York, 7 Bosw. (N. Y.) 601; McCracken *v.* San Francisco, 16 Cal. 591; Pimental *v.* San Francisco, 21 Cal. 351; Dickinson *v.* Poughkeepsie, 75 N. Y. 65; Richardson *v.* County of Grant, 27 Fed. Rep. 495.

are the parties ultimately liable, and which by the charter must be made in a prescribed mode, if made without any contract or a valid one, the doctrine of implied liability does not apply in favor of the contractor, unless, indeed, the corporation has collected the amount from the adjoining owners and has it in its treasury.[1]

[1] Argenti *v.* San Francisco, 16 Cal. 255, opinion of *Field*, C. J. A municipal corporation was holden liable, under its charter, upon an implied assumpsit to collect and pay over assessments awarded to property owners for the opening of a street. Wheeler *v.* Chicago, 24 Ill. 105 (1860); see *infra*, secs. 466, 480, 483; Sangamon Co. *v.* Springfield, 63 Ill. 66 (1872). Where a contractor has entered into a contract in good faith, relying upon the regularity of the proceedings of the common council, the city, having received the benefit of the performance, is estopped from questioning the regularity in that regard. Moore *v.* New York, 73 N. Y. 238. Where certificates of assessments against property owned by the State for a sewer tax, were declared void for want of power in the city to make the assessment, it was held that the city was liable to the contractor for the amount thereof. Polk County Savings Bank *v.* State, 69 Iowa, 24. So also where assessments are void for other reasons, the municipality has been held liable. Scofield *v.* Council Bluffs, 68 Iowa, 695. Compare Bucroft *v.* Council Bluffs, 63 Iowa, 646. *Post*, sec. 480. But where a contractor for the improvement of streets agreed that he would not look to the town in any event for compensation, and it was afterwards decided that the contract was *ultra vires* and void, and that the lot-owners were not liable for the work, it was held that the town was not liable to him, by reason of its *inherent power* to improve streets. Belleview *v.* Hohn, 82 Ky. 1. *Post*, secs. 467, 480. So where the charter of a city declared that it should *not be liable in any manner for local improvements* which are made a charge upon the adjacent property; and the council by a resolution which was a nullity, because of the non-concurrence of the mayor, ordered a certain local improvement to be made, and the work let to the plaintiff, who did it, and failed to collect the same (by reason of the nullity of the resolution) from the adjoining owners (Saxton *v.* Beach, 50 Mo. 488, 1872); and having expended a considerable sum in an unsuccessful attempt to charge the abutting property, he brought suit against the city to recover the sum so expended in testing the validity of the resolution of the council. The Supreme Court of *Missouri* held that the city was not liable, distinguishing Clayburgh *v.* Chicago, 25 Ill. 535, and Fisher *v.* St. Louis, 44 Mo. 482; Saxton *v.* St. Joseph, 60 Mo. 153 (1875). In *Kentucky* it is held there is no liability unless the city has the right to proceed to make property-holders liable. But if the nature or ownership of the adjacent property is such that no steps which could have been taken would have rendered it or its owner liable, then the city must pay for the improvement, or it will have as to such work no means of executing its general power to improve all streets. Caldwell *v.* Rupert, 10 Bush (Ky.), 179; Louisville *v.* Nevin, 10 Bush (Ky.), 549; Craycraft *v.* Selvage, 10 Bush (Ky.), 696 (1874).

Where a city, organized and acting under a general law, which provides: "The city shall be *liable to the contractors for so much thereof only* as is occupied by public grounds of the city bordering thereon, and the crossings of streets and alleys," makes a contract for the improvement of a street at the expense of the property holders, and the contractor does the work in whole or in part, and the engineer refuses to make an estimate, and the council refuses to issue precepts upon the proper application against the property holders, a suit cannot be maintained by the contractor against the city for damages. The remedy in such case is by mandate to compel the engineer and council to perform their duties. Greencastle *v.* Allen, 43 Ind. 347 (1873). If the members of the common council of a city, in passing an ordinance and letting a contract for the improvement of a street, act in good