municipality nor its subordinate officers can make a binding contract for such work except in compliance with the requirements of the law.[1] So where the charter requires any sale or lease of the real estate of a city *to be made at public auction to the highest bidder*, an ordinance of the council of the city making a lease of a portion of its realty, upon the payment of a rent reserved, is void.[2]

§ 467 (389). **Lowest Bidder; Patented Inventions.** — The Supreme Court of Michigan has affirmed, while the Supreme Court of Wisconsin and of other States have denied, the proposition that where a city charter provides that no contracts shall be made by the city except with the *lowest bidder*, after advertisement of proposals, it does not prohibit the corporation from contracting to lay *Nicholson pavement*, though the right to lay it is patented and owned by a

struction. If the original contractor abandons the work, it is not necessary to re-advertise and let to the lowest bidder, the original contractor being liable for the excess of cost over his contract price. Leeds, *In re*, 53 N. Y. 400 (1873).

Where contracts for public work are required by law to be made *by advertising proposals* and specifications, for the purpose of securing competitive bidding, such specifications must be definite as to the quantity as well as the quality of materials required, or the contract will be void. Bigler *v.* New York, 5 Abb. (N. Y.) N. Cas. 51.

Construction of New York Act of 1886, chap. 142, requiring sale at auction by municipal corporations of right to build and operate railways on streets to the highest bidder. See People *v.* Barnard, 110 N. Y. 548 (1888).

A bid for street-paving is not defective in not distinguishing between the portions of the improvement chargeable to the lots fronting on the street, and the portion chargeable to the city, where the relative proportions have already been fixed. Beniteau *v.* Detroit, 41 Mich. 116. Remedy of taxpayer. Follmer *v.* Nuckolls Co., 6 Neb. 204; compare Clark *v.* Dayton, *ib.* 192. Whether, when the work is of such a character that its ultimate cost cannot be foreseen, there can be any choice among bids, *quære*. McBrian *v.* Grand Rapids, 56 Mich. 95.

The New York city charter of 1873, containing a provision similar to that stated in the text, was construed to require a submission for competition of every important item of a contemplated work. Matter of Merriam, 84 N. Y. 596. Where the charter is imperative that contracts for public works should be let to the lowest bidder and the lowest bidder withdraws his bid, it is the duty to advertise again and not to award the contract to the next lowest bidder. Twiss *v.* Port Huron, 63 Mich. 528 (1886); s. c. 30 N. W. Rep. 177.

[1] Addis *v.* Pittsburg, 85 Pa. St. 379 (1877).

[2] San Francisco & Oakland R. Co. *v.* Oakland, 43 Cal. 502 (1872).

Where the charter requires that all work for the city shall be let to the lowest bidder, after a prescribed notice of the time and place of letting shall have been given, and requires that similar notice shall be given where work is re-let, an assessment upon a lot for work done is void if the contract was let or re-let without notice. Mitchell *v.* Milwaukee, 18 Wis. 92 (1864); see, also, Wells *v.* Burnham, 20 Wis. 112; Hasbrouck *v.* Milwaukee, 21 Wis. 217 (1866). Owner may, in such case, restrain the sale. *Ib.* The contract must be the same that was advertised. Nash *v.* St. Paul, 11 Minn. 174.

single firm. The question is close; but there seems, so far, to be a tendency in the courts to adopt the Wisconsin view.[1]

§ 468 (390). **Same subject.** — Where the municipal authorities were required by law *to advertise for sealed proposals* for making local improvements, and award the work to the *lowest responsible bidder*, to publish a notice of the award, and to allow the owners of the major part of the frontage to take the contract upon the same terms if they should desire, the court were of opinion that the city authorities had no power to do work which could not be contracted for in this mode, or which the abutters could not themselves perform, and that the award of a contract for *a patented pavement* to the assignee of the patentee, who had the exclusive right to lay the same, was unauthorized, and the contract void.[2]

As the purpose of such a provision in the charter is to secure, through competition, the most advantageous terms, something is necessarily left to the discretion, to be fairly exercised of course, of

[1] Dean *v.* Charlton, 23 Wis. 590 (1869); Nicholson Pavement Co. *v.* Painter, 35 Cal. 699; Hobart *v.* Detroit, 17 Mich. 246 (1868). Dean *v.* Charlton, *supra*, was approved by *Sutherland*, J., in Dolan *v.* Mayor, &c. of New York, 4 Abb. Pr. (N. S.) 397 (1868), and followed by the Supreme Court of *Louisiana* in Burgess *v.* Jefferson, 21 La. An. 143 (1869), in which it appeared that the contractors with the city had the exclusive right to lay the patented pavement in the State. But under provisions of law relating to the city of New York, which require all work to be done and supplies to be furnished to be by contract, where the expenditure will exceed $1,000, and which direct all contracts to be made or let, after advertisement, to the lowest bidder, the city council is not, in the opinion of the Court of Appeals, prohibited from making or paving a street in the manner or with materials which do not admit of competitive bids. Dugro, *In re*, 50 N. Y. 513 (1873). The subject is discussed by *Brewer*, J., in Yarnold *v.* Lawrence, 15 Kan. 126 (1875), who inclined to the *Michigan* view, but the question was not decided by the court. Further, as to rights of lowest bidders, see Attorney-General *v.* Detroit, 41 Mich. 224; s. c. 12 Am. Law Reg. (N. S.) 149; see also Detroit *v.* Robinson, 42 Mich. 198; Detroit *v.* Robinson, 38 Mich. 108; *post*, secs. 468, 870, note, 909, 791, note. Sequel to Dean *v.* Charlton, *supra*, see Mills *v.* Charleston, 29 Wis. 400, and Dean *v.* Borchenius, 30 Wis. 236, the legislature having validated the assessment. *Post*, sec. 814 and note. See, also, Eager, *In re*, 46 N. Y. 100 (1871). Liability of city to patentee to pay him "royalty." Bigelow *v.* Louisville, 3 Fish. Pat. Cas. 602 (1869); *post*, sec. 966. Where a charter does not require a contract to be let to the lowest bidder after advertising for proposals at the expense of abutters, although such contracts may be made by private agreement with the city, they must be fairly made at reasonable prices, with due regard to the lot-owners' interests, or equity will relieve against them. Cook *v.* Racine, 49 Wis. 243; s. c. 5 N. W. Rep. 352.

[2] Nicholson Pavement Company *v.* Painter, 35 Cal. 699 (1868). This case was decided before Dean *v.* Charlton, *supra*, and the opinion of *Sanderson*, J., in its general scope, sustains the view of the *Wisconsin* court; and approving of the language of *Field*, C. J., in Zottman's Case, 20 Cal. 102, treats "the *mode* as constituting the measure of the power." *Post*, chap. xix.; *ante*, sec. 98; *post*, sec. 669.

the council, in the adoption of the course which will best attain the end; and it does not contravene this restriction to call for bids for putting down various kinds of wood and stone pavements, some patented and some not, and afterwards, when all the proposals are in, selecting the one which is relatively the lowest or the most satisfactory, all things considered; but when the kind is thus selected, the lowest responsible bidder who has the lawful power to perform his undertaking, has the absolute legal right to have the contract awarded to him.[1]

§ 469 (391). **Lowest Bidder; Exclusive Right.** — In an action on a contract for lighting certain streets in New York City with gas, it appeared that the company had, by law, *the exclusive right* to furnish that part of the city with gas. The charter of the city, however, required all contracts for wants and supplies beyond a certain value, which the contract in suit exceeded, *to be let to the lowest bidder*, and the contract not being so let, it was claimed to be void. It was held that since the company had the exclusive right to furnish the gas (which prevented competition), the provision of the charter requiring contracts to be let to the lowest bidder (with a view to secure competition) was inapplicable, and the contract was sustained under the general corporate power of the city to contract for the lighting of its streets.[2]

§ 470 (392). **When Contract completed.** — Although *notice has been published inviting proposals* to do public work, yet the contract is incomplete until the proposal is actually accepted, and the corporation inviting the proposal is not, it seems, liable to damages for *refusing to accept an offer*, even though it be the lowest regular offer made. It is certainly not thus liable where the notice and the proposals with respect to the amount and form of the security, do

[1] Attorney-General *v.* Detroit, 41 Mich. 224; s. c. 12 Am. Law Reg. (N. S.) March, 1873, p. 149. Remedy of lowest bidder when contract is awarded to another. *Ib.*; Kelly *v.* Chicago, 62 Ill. 279 (1871); *post*, chap. xxii. sec. 917.

The council of a city held to have no power to contract for the grading of a street until they first shall have enacted an ordinance for the said improvement, nor except such contract be let to the lowest bidder, after publication of notice and fair competition. Fulton *v.* Lincoln, 9 Neb. 358.

[2] Harlem Gas Co. *v.* New York, 33 N. Y. 309. Where a city has authority to contract therefor, it cannot resist payment for gaslight furnished, because of illegal promises as to the particular fund from which payment would be made. The consideration of such promises being legal, the price would be payable, if not otherwise, out of the general fund; and the objectionable provisions may be rejected, and the rest of the contract permitted to stand. Nebraska City *v.* Nebraska Gas Co., 9 Neb. 339.

not comply with the requirements of the ordinances of the city, and where these provided that contracts should not be executed until laid before the common council.[1] The *rule against combinations to prevent bidding at auction sales* applies to proposals for government work, in response to a call therefor, aiming at a contract with the lowest bidder; and a combination of contractors whereby the privilege of bidding is secured by one, without competition, is against public policy and illegal; and if it results in a letting at unreasonable prices, it authorizes a rejection of the proposal or a repudiation of the contract.[2]

§ 471 (393). **Contracts of Suretyship.** — A municipal corporation *cannot, without legislative authority*, become surety for another corporation or an individual; cannot guarantee the bonds or obligations of another, or make accommodation indorsements. Such an authority cannot be implied or deduced from the general and usual powers conferred upon such corporations. Although such a corpo-

[1] Smith *v.* Mayor, &c. of New York, 10 N. Y. (6 Seld.) 504 (1853), affirming s. c. 4 Sandf. S. C. R. 221. "The notice inviting proposals to do the work," says *Willard*, J., delivering the opinion of the Court of Appeals (10 N. Y. 504), "did not, in my judgment, bind the street commissioner of the corporation to accept, at all events, the lowest bid, even though in all respects formal. Until the bid is accepted by some act on the part of the corporation, no obligatory contract was created." See, also, People *v.* Croton Aqueduct Board, 26 Barb. (N. Y.) 240; Greene *v.* Mayor, &c. of New York, 60 N. Y. 303 (1875); State *v.* Directors, &c., 5 Ohio St. 234 (1855); Altemus *v.* Mayor, &c., 6 Duer (N. Y.), 446; Argenti *v.* San Francisco, 16 Cal. 255; Wiggins *v.* Philadelphia, 2 Brews. (Pa.) 444; *Ib.* 443; Keogh *v.* Wilmington, 4 Del. Ch. 491.

A board of commissioners charged with the duty of contracting for a public work need not call for bids or proposals unless expressly required. But if they choose to invite competition, they may, after accepting a bid, alter the specifications furnished by the bidder before executing the contract; and this without the knowledge of competing bidders. Kingsley *v.* Brooklyn, 5 Abb. (N. Y.) N. Cas. 1. The duties and liabilities of a city and its officers under a contract for the building of extensive water-works, considered. A provision in the act authorizing the work, for the preliminary adoption of a "plan" therefor by the city, does not prevent subsequent changes in the details of the work. And where, after alterations had been made and extra work directed during the progress of the undertaking, the contractors were stopped by the city before completing it, — *Held*, that they could recover for work done up to the limits of the appropriation authorized by the act, though the work was incomplete, the legislature having recognized the necessity of further outlay by an act authorizing an additional appropriation. Where a public work is, under a statute, to be contracted for by city officers according to a plan to be adopted by the city, with a proviso that the whole expense shall not exceed a certain sum, to be raised by issuing city bonds, a contract for doing the work for a sum within that amount is valid, although it reserves authority to the officers directing the work to make such changes of detail as may be necessary, and fix the price of whatever extra work may be required. *Ib.*

Further as to *lowest bidder*, see chapter on Mandamus, *post*, sec. 832, note; sec. 1027, note.

[2] People *v.* Stephens, 71 N. Y. 527.

ration may have power directly to accomplish a certain object, and itself expend its revenues or money therefor, yet this does not give or include the power to lend its credit to another who may be empowered to effect the same object. Expending money by a city council, as agents or administrators of their constituents, is a very different thing from binding their constituents by a contract of suretyship, — "a contract which carries with it a lesion by its very nature." Thus, the indorsement of the bonds of a street railroad company in a city, by the city authorities, is not within the ordinary administrative powers of the corporation, and requires express legislative grant.[1]

§ 472 (394). **Authorized Contracts; Rights and Liabilities.** — But with respect to authorized contracts a municipal corporation has the

[1] Louisiana State Bank *v.* Orleans Navigation Co., 3 La. An. 294 (1848). In this case the municipal corporation was sought to be made liable upon its guaranty of bonds issued by the Navigation Company, which the mayor, in the name of the municipality, was authorized, by certain resolutions of the council, to indorse. It was held that the council transcended its powers, and the guaranty did not impose any legal obligation upon the municipality. The disability of such corporations, without express power, to enter into contracts of suretyship is shown in the masterly and exhaustive opinion delivered by *Eustes*, C. J. See, also, Blake *v.* Mayor, &c. of Macon, 53 Ga. 172 (1874). In this case *McCay*, J., says: "The objects of a municipal corporation are, in the main, the preservation of order, and the doing of such acts for the public good as cannot well be done by private enterprise. But here is a private enterprise; and it is insisted that it is within the scope of municipal power not to build a street road, but to aid, by a donation of the credit of the city, a private corporation to build it, and to take the profits of it. We do not think this is within the ordinary scope of municipal authority, nor can any authorities, as we believe, be found carrying the objects of a corporation that far. We are clear that the proposed indorsement is *ultra vires*."

A municipal corporation has no *implied power* to lend its credit or make accommodation paper for the benefit of citizens, to enable them to execute private enterprises. Clark *v.* Des Moines, 19 Iowa, 199, 224 (1865); 1 Parsons N. & B. 166; Smead *v.* Indianapolis, P. & C. R. Co., 11 Ind. 104.

The power to *borrow money* for any public purpose does not authorize the loan of the credit of the city. Chamberlain *v.* Burlington, 19 Iowa, 395; *contra*, Rogers *v.* Burlington, 3 Wall. 654, four judges dissenting. In Dutton *v.* Aurora, 114 Ill. 138, *Scholfield*, J., said: "Having power to borrow money, the power to issue bonds therefor results as a necessary incident." *Ante*, sec. 117. And see Meyer *v.* Muscatine, 1 Wall. 384. The author can but think that power to a corporation to borrow money should not be construed to give the power to loan its credit, but only to borrow money for legitimate and proper municipal objects, as shown by the charter or constituent act of the corporation. See Payne *v.* Brecon, 3 Hurl. & Nor. 572; *ante*, sec. 117; Bateman *v.* Mid-Wales Railway Co., Law Rep. 1 C. P. C. 510. Power to guarantee payment of authorized contracts. Memphis *v.* Brown, 20 Wall. 289 (1873). If city pays its unauthorized guaranty it is subrogated to the rights and lien of the creditor. *Supra*, sec. 458, note. Private corporations cannot without legislative sanction guarantee obligations which are beyond the scope of their chartered powers. Davis *v.* Old Colony R. R. Co., 131 Mass. 258. Morawetz on Corp. (2d ed.) 423.

same rights and remedies, and is bound thereby and may be sued thereon in the same manner as individuals.[1] Thus, if such a corporation, duly empowered, enters into a partnership relation with private individuals with respect to the profits to be derived from a market-house, its rights, especially as regards the copartners and the financial administration of the partnership property, are not different from those of an ordinary partner.[2]

§ 473. **Power to Contract illustrated.** — A city incorporated under the general law of Indiana *has power, with respect to the lighting of its streets and public buildings*, &c., to contract with a gas company on that subject, and may exercise such power within the limits of its franchise according to its own discretion. Such a contract, when made, must be regarded as made by such city in the exercise of its power to contract and not in its power to legislate, although the power to make the contract be authorized by an ordinance. And when, by the terms of such contract, the city is not restricted from the legitimate exercise of its public power touching the subject-matter thereof, but expressly reserves its administrative authority to keep the posts, lamps, and burners in good repair if the company should fail to do so, and also reserves the right to test the quality of the gas furnished by said company, and the capacity of the burners at all times, and is not restricted from extending its streets, establishing an additional number of lamps, obtaining gas from other sources, or establishing its own gas-works as the public interests may require, such contract, not being a restriction upon its legislative power nor fraudulent nor against public policy, is valid

[1] Corporations may make contracts within the powers expressly granted by the acts of their creation and the implied powers incidental and necessary to the execution of such expressed powers and the performance of the duties enjoined upon them. For these purposes it will be bound to perform them the same as individuals. Hight *v.* Monroe Co., 68 Ind. 576; Seibrecht *v.* New Orleans, 12 La. An. 496; Strauss *v.* Ins. Co., 5 Ohio St. 59; Douglass *v.* Virginia City, 5 Nev. 147; Hayward *v.* Davidson, 41 Ind. 212; McCabe *v.* Fountain Co., 46 Ind. 380; Burnett *v.* Abbott, 51 Ind. 254; Gordon *v.* Dearborn Co., 52 Ind. 322; Jackson Co. *v.* Applewhite, 62 Ind. 464; Jennings Co. *v.* Verbarg, 63 Ind. 107; Indianapolis *v.* Indianapolis Gas Co., 66 Ind. 396, citing and approving text.

[2] New Orleans *v.* Guillotte, 12 La. An. 818 (1857). In New Orleans *v.* St. Louis Church, 11 La. An. 244 (1856), it was contended by the counsel for the city that even if certain resolutions, in favor of the defendants, allowing them to establish a cemetery within the city, amounted to a contract, and though their repeal be not justified by the facts, and be a violation of the contract by the city, yet that the latter has the power to violate its contracts, and the defendants have no redress except in an action for damages. But this doctrine was rejected by the court, which declared it to be as "unsound as it is novel," since a liability for damages is "the very opposite of a recognition of a right to violate the contract." *Per Buchanan*, J.

and binding upon such city, and may be enforced in the same manner as the contract of a person or business corporation, and cannot be repealed, impaired, or changed by the city, by ordinance or otherwise.[1]

§ 474 (395). **Same subject.** — So where a municipal corporation, acting within the scope of its powers, *in order to secure the erection of gas-works*, passed an ordinance whereby the gas-works and their income were placed in the hands of trustees for the benefit of those who loaned money to execute the undertaking, *such ordinance is a contract*, and cannot be violated by the city, although it may deem it for the interest of its citizens to do so; nor is it in the power of the legislature to authorize its violation.[2]

§ 475 (396). **Same subject.** — So where the mayor and council have, by the charter, power to make, in their corporate capacity, all such contracts as they may deem necessary for the welfare of the corporation, they *may contract to sell stock owned by the city* in a private corporation, to enable the city to pay its debts; and the discretionary power with which the mayor and council are invested cannot, when *bona fide* exercised, be controlled by a court of equity, at the instance of property owners and taxpayers.[3]

§ 476 (397). **Same subject.** — Power to a city corporation *to pave streets at the expense of the owners* and recover the amount from them if they fail themselves to pay when required by ordinance, gives the corporation the power to *purchase paving materials* and incur a debt for that purpose; and in a suit by the vendor of such materials against the corporation, it is no defence that the council had not passed an ordinance before they purchased the materials, requiring the owners to pave: this is a matter to which a creditor is not bound to look. The question would be different if the city had sought to make the lot-owner liable for the cost of paving; in such case, it must show a strict compliance with the requirements of its charter.[4]

[1] Indianapolis *v.* Indianapolis Gas Co., 66 Ind. 396; Valparaiso *v.* Gardner, 97 Ind. 1.

[2] Western Savings Fund Society *v.* Philadelphia, 31 Pa. St. 175 (1858); Same *v.* Same, 31 Pa. St. 185 (1858); Indianapolis *v.* Indianapolis Gas Co., 66 Ind. 396, citing and approving text; *ante*, chap. iv. sec. 69.

[3] Semmes *v.* Columbus, 19 Ga. 471 (1856); followed and text approved, Shannon *v.* O'Boyle, 51 Ind. 565 (1876); Athens *v.* Carnak, 75 Ga. 429; Adams *v.* Rome, 59 Ga. 771; *ante*, sec. 94; *post*, chapter on Corporate Property, sec. 575; *post*, chap. xx.; Bush *v.* Carbondale, 78 Ill. 74 (1875).

[4] Bigelow *v.* Perth Amboy, 1 Dutch. (N. J.) 297 (1855); *post*, chap. xix.

§ 477 (398). **Settlement of Disputed Claims, &c.** — Growing out of its authority to create debts and to incur liabilities, a municipal corporation has power to *settle* disputed claims against it, and an agreement to pay these is not void for want of consideration.[1] If it has obtained a contract which, by mistake or a change of circumstances, it deems to operate oppressively upon the other party, an agreement to make an *additional compensation*, or to modify or annul it, is not invalid for want of consideration.[2]

[1] Augusta *v.* Leadbetter, 16 Me. 45 (1839); Bean *v.* Jay, 23 Me. 117, 121 (1843); People *v.* Supervisors, 27 Cal. 655; People *v.* Coon, 25 Cal. 648. A municipal corporation has power to settle disputed claims. In this case the acceptance by a city council of $100 in payment of a judgment for $200 obtained before a justice of the peace, from which the defendant was about to appeal, was held a proper exercise of corporate power. Agnew *v.* Brall, 124 Ill. 312 (1888). A town board of supervisors held to have no power, unless expressly conferred, to discharge a judgment in favor of the town except upon full payment thereof, nor to allow credits upon it of sums not allowed by the court. Butternut *v.* O'Malley, 50 Wis. 329. It may annex conditions to a proposal of settlement, and is not liable unless the conditions are met. Merrill *v.* Dixfield, 30 Me. 157 (1849). A municipality may, without special grant, issue new bonds in the place of old bonds which had been issued according to law. Rogan *v.* Watertown, 30 Wis. 259 (1879). Bonds issued to raise money to pay bonds of an older issue will be declared valid in equity, though the statute authorizing them required the recall and cancellation of the old bonds before their issue. State *v.* Columbia, 12 S. C. 370. Where new bonds were issued to replace old ones, a recital by the mayor and council in a proclamation submitting the question of issuing them to a vote, that they were assured the old bonds would be surrendered, was held not to be a condition for issuing the new bonds; if otherwise lawful they were valid obligations. Sullivan *v.* Walton, 20 Fla. 552; *infra*, sec. 504, note.

[2] Bean *v.* Jay, 23 Me. 117, 121; Meech *v.* Buffalo, 29 N. Y. 198 (1864). Further, as to consideration, Baileyville *v.* Lowell, 20 Me. 178 (1841); Nelson *v.* Milford, 7 Pick. (Mass.) 18 (1828), valuable opinion of *Parker*, C. J.; see People *v.* Stout, 23 Barb. (N. Y.) 349; *ante*, chap. iv. sec. 75. The power to sue and be sued gives to a corporation the right to settle or compromise claims. Where a city has a judgment, from which an appeal is about to be taken, the council may, if done in good faith, cancel the judgment on the payment of costs; and such an agreement, when executed, is binding upon the corporation. Petersburg *v.* Mappin, 14 Ill. 193 (1852); Orleans Co. Sup. *v.* Bowen, 4 Lansing (N. Y.), 24. The cases above cited in this note are reviewed by *Richardson*, C. J., in Barnes *v.* District of Columbia, 22 Court of Claims Rep. 366 (1887), and the conclusion reached that the doctrine of the text did not apply to the case before the court, under the legislation of Congress as to the power of the Board of Public Works of the District of Columbia to make contracts, under which it is held that such legislation provides how contracts by the Board for public improvements shall be made, and that if there is material departure from the requirements of the statute the contract is not binding. South Boston Iron Co. *v.* U. S., 118 U. S. 37, affirming 18 Court of Claims, 165; Brown *v.* District of Columbia, 127 U. S. 579 (1887). In *Louisiana* the president of a police jury has no power to institute a suit in its behalf without special authority conferred by ordinance or resolution, and parol testimony is not admissible to prove either. Police Jury of Ouachita *v.* Monroe, 38 La. An. 630. The legislature may authorize municipal corporations to sue, without payment of costs or complying with other requirements imposed upon natural persons or private corporations. In this case an appeal by a city without having given a *supersedeas* bond

A town may make a contract with a creditor whereby the latter agrees to discount or throw off a portion of his debt, and such an agreement, if founded on a sufficient consideration, will be enforced.[1]

§ 478. **Power to arbitrate Claims.** — As a general proposition, municipal corporations have, unless specially restricted, the same powers to liquidate claims and indebtedness that natural persons have, and from that source proceeds *power to adjust all disputed claims*, and when the amount is ascertained to pay the same as other indebtedness. It would seem to follow therefrom that a municipal corporation, unless disabled by positive law, *could submit to arbitration* all unsettled claims with the same liability to perform the award as would rest upon a natural person, provided, of course, that such power be exercised by ordinance or resolution of the corporate authorities.[2] It is no objection to the validity of such ordinance that it was passed at a meeting of the city council at which all members were not notified to be present, provided that the ordinance be approved at a subsequent regular meeting. Nor is the ordinance an act *ultra vires* the corporation, although the work for which damages are claimed was done outside of the city limits, provided it is a part of a work which the corporation has power to perform.[3] In some cases it is held that a city has no power to submit to arbitration claims for damages arising under the power of eminent domain.[4]

was sustained. Holmes *v.* Mattoon, 111 Ill. 37.

[1] Baileyville *v.* Lowell, 20 Me. 178 (1841). In this case, the town, against which the creditor had an execution, had the option, and was authorized, to raise the money by loan or by assessment; and if in the latter mode, either at once or by instalments. If not raised and paid, the creditor was authorized to cause the property of the inhabitants to be distrained upon his writ. It was held under these circumstances, that an agreement by the creditor, which was accepted and complied with by the town, that if the town would *at once* assess the amount required, and collect the same, he would abate a portion of his debt, was founded upon a sufficient consideration, and was binding upon him. A statute which *allows a debtor of a municipal corporation* to procure its obligations and *set them off against his debt* is not unconstitutional for divesting creditors of their vested rights, or as impairing the obligations of contracts. Amy *v.* Shelby County Taxing District, 114 U. S. 387.

[2] Text approved, Springfield *v.* Walker, 42 Ohio St. 543, holding also that municipal corporations are "persons" within the meaning of the statute of Ohio — R. S. sec. 4947 — concerning arbitrations.

[3] City of Shawneetown *v.* Baker, 85 Ill. 563; Dix *v.* Dummerston, 19 Vt. 263; Griswold *v.* Stonington, 5 Conn. 367; Alexandria Canal Co. *v.* Swann, 5 How. (U. S.) 83. Power exists unless the corporation be disabled. Eldon Tp., *In re*, 6 Upper Can. Law Jour. 207; Brant County, *In re*, 19 Upper Can. Q. B. 450; District Township of Walnut *v.* Rankin, 70 Iowa, 65.

[4] *Post*, chap. xvi.

§ 479 (399). **Contracts with Attorneys.** — Resulting also from the power to make contracts, to own property, and to incur liabilities, is the authority in a municipal corporation, in the absence of express or implied restriction, *to employ an attorney*[1]

[1] Smith *v.* Sacramento, 13 Cal. 531; State *v.* Paterson, 40 N. J. L. 186. May employ, unless specially restricted, an attorney in addition to the city attorney. *Ib.* The employment of outside counsel must, of course, be duly authorized by the municipality. Memphis *v.* Brown, 20 Wall. 289, 321 (1873); Memphis *v.* Adams, 9 Heisk. (Tenn.) 518 (1872); s. c. 24 Am. Rep. 331; Clark *v.* Lyon Co., 8 Nev. 181, (1872); Ellis *v.* Washoe Co., 7 Nev. 291; Butternut *v.* O'Malley, 50 Wis. 333 (to make substitution); Roper *v.* Laurinburg, 90 N. C. 427 (counsel employed to defend police officers in actions for false imprisonment); Waterbury *v.* Laredo, 60 Tex. 519, where a power to establish ferries was held to imply a power to employ counsel to represent the city in a matter involving their establishment, and to secure his fees. *Ante*, sec. 147; see Hornblower *v.* Duden, 35 Cal. 664; compare Clough *v.* Hart, 8 Kan. 487. This case holds that there is *prima facie*, if not absolutely, an implied restriction upon city and county corporations to employ other attorneys to perform the precise duties, as prescribed by law, of the city and county attorneys elected by the people or provided for by incorporating statutes. Compare Thacher *v.* Jefferson Co., 13 Kan. 182, and cases cited; Hugg *v.* Camden (right to employ counsel in addition to the city solicitor), 29 N. J. Eq. (2 Stewart) 6 (1878). Where a charter gave power to a municipal corporation to employ an attorney when necessary, and a subsequent, statute provided for a law department, and a chief officer to be called Attorney and Counsel, with a salary, the department to have charge of and conduct *all* the law business of the corporation, it was held that the subsequent statute was an implied repeal of the power to employ an attorney under the charter. Lyddy *v.* Long Island City, 104 N. Y. 218 (1887). A municipal corporation which has employed an attorney to file a bill seeking to destroy by suit the existence of the corporation itself, cannot apply the corporate funds in payment of such services. Daniel *v.* Memphis, 11 Humph. (Tenn.) 582 (1851); *ante*, sec. 147; *post*, sec. 910, note. A municipal corporation has no power to employ counsel to defend a suit exclusively directed against *its officers*, though its object be to enjoin them from performing their official functions and to appoint a receiver of its corporate property. Smith *v.* Nashville, 4 Lea (Tenn.), 69; *ante*, sec. 147. When suit is brought in the name of a municipal corporation without authority it may be dismissed, on motion of the defendant, or by the court of its own motion when its attention is called to the fact. Kankakee *v.* Kankakee & Ind. R. R. Co., 115 Ill. 88.

Unless there is some special restriction the corporation may incur liability to compensate an attorney employed by it to conduct or defend suits which relate to the due performance of the duties or trusts with which, in its corporate capacity, it is charged by law. Attorney-General *v.* Mayor, &c. of Norwich, 2 Myl. & Cr. 406; Lewis *v.* Mayor, &c. of Rochester, 9 Com. B. (N. S.) 401 (1860); *ante*, sec. 147. A city owning stock in a railroad company in another State may, in virtue of such ownership, unless specially restricted, employ counsel to attend to its interests in such State. Memphis *v.* Adams, *supra*. The Supreme Court of *Wisconsin* hold that no action will lie against a city having "the general powers of municipal corporations at common law," to recover compensation for services of counsel to aid in *criminal prosecutions* against persons who had lately been officers of the city, for offences committed under color of their official duties, resulting in pecuniary injury to the city. Butler *v.* Milwaukee, 15 Wis. 493. In *Indiana* a county board has no power to employ counsel to conduct criminal prosecutions, and cannot be compelled to pay for services rendered. Hight *v.* Monroe Co., 68 Ind. 575; Ripley Co. *v.* Ward, 69 Ind. 441; Grant Co. *v.* Bradford, 72 Ind. 455. In *Iowa*, the board of supervisors