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

to conduct or defend suits in which the corporation is interested in its corporate capacity; and the corporation is bound to pay for services rendered by him on due employment, without an express vote to that effect.[1] If a corporation attorney, after his term of office has expired, continues in the management of suits in which the corporation is interested, without objection from, and with the knowledge of, the corporation and of his successor, he may, it has been held, recover for such services.[2] An attorney was *employed upon a quantum meruit* by the city to conduct a case to a final termination, and pending the litigation was appointed city counsellor, when it became his official duty to act for the city; and it was held that, in the absence of an express contract, he could not recover for the value of such services as were rendered after his appointment. It might be otherwise if the original employment had been to carry the suit through for an agreed sum.[3]

may employ special agent or attorney to assist in the collection of taxes not collectible by county treasurer in the discharge of his duty. Withelm *v.* Cedar Co., 50 Iowa, 524. Compare *ante*, sec. 139, and cases there cited, as to power to offer rewards for offenders. Buttrick *v.* Lowell, 1 Allen (Mass.), 172. Cannot recover for defending pauper criminals in *Alabama*. Posey *v.* Mobile Co., 50 Ala. 6 (1873). A duly qualified city attorney, having charge of the interests of a city in its legal controversies, has power to *pray an appeal* from a judgment against it, and to take the necessary steps to perfect the same. Connett *v.* Chicago, 114 Ill. 233.

[1] Langdon *v.* Castleton, 30 Vt. 285 (1858); *ante*, sec. 147.

[2] *Ib.;* see Harrington *v.* School District, 30 Vt. 155; *supra*, sec. 459, as to implied contracts. Compare Clough *v.* Hart, 8 Kan. 487. Compensation of *city attorney*. See Carroll *v.* St. Louis, 12 Mo. 444; Orton *v.* State, 12 Wis. 509; also, chapter on Corporate Officers, *ante*. Liability for attorney's fee under charter or special statutes, see Brady *v.* Supervisors, 2 Sandf. S. C. R. 460, affirmed 10 N. Y. (6 Seld.) 260 (1851), for reasons given by *Oakley*, C. J., in 2 Sandf. 460; Halstead *v.* Mayor, &c. of New York, 3 Comst. (3 N. Y.) 430; Memphis *v.* Brown, 20 Wall. 289 (1873); State *v.* New Orleans, 20 La. An. 172; Bright *v.* Hewes, 19 La. An. 666; Parker *v.* Williamsburg, 13 How. Pr. (N. Y.) 250; Clough *v.* Hart, *supra*, and cases cited by *Valentine*, J. Proof of employment. Butler *v.* Charlestown, 7 Gray (Mass.), 14; Memphis *v.* Brown, 20 Wall. 289, 321; Memphis *v.* Adams, 9 Heisk. (Tenn.) 518; s. c. 24 Am. Rep. 331; Cass Co. *v.* Ross, 46 Ind. 404 (1874); McCabe *v.* Fountain Co., 46 Ind. 380.

[3] Detroit *v.* Whittemore, 27 Mich. 281 (1873). Construction of power to employ private counsel. *Ib.* In employing counsel the board of county commissioners acts as a corporation, and like other corporations, may, unless the statute otherwise requires, employ agents and attorneys without making such employment a matter of record, but this must be done by the concurrent act of a majority of the board at a legal session. Such attorney may recover compensation for his services. McCabe *v.* Fountain Co. Comm'rs, 46 Ind. 380 (1874). The city council under the laws of *Iowa*, while acting as a board of equalization, is discharging a corporate function and acting as a representative of the city, and if its action is appealed from, the city solicitor is justified in defending it in the appellate court; for which service he is entitled to reasonable compensation, even though the service or the compensation be not provided for by city ordinance. Kinnie *v.* Waverly, 42 Iowa, 437 (1876). *Extra compensation*. *Ante*, sec. 233.

§ 480 (400). **Contracts for Local Improvements.** — A municipal corporation contracted with a paver to do certain work at a fixed price, of which it was to pay one third, and the owners of the abutting property two thirds. It was judicially determined that the proprietors were, in law, liable to pay only one third; and it was held, in an action by the paver against the corporation, that it was a *warrantor* for the remaining one third; and it was held liable accordingly.[1] But where the charter or constituent act in reference to improving streets provides that the *city shall be liable to the contractor for so much only* of the improvement as is occupied by streets and alleys crossing the same, and that the owners of adjacent lots shall be liable for the rest, the city is not liable for the deficiency in case the adjacent property does not sell for enough to pay the assessment, and though the owner be a non-resident.[2]

[1] Tounier *v.* Municipality, 5 La. An. 298. So where a city by ordinance directed that a sewer be constructed, reciting that the action was taken upon petition of a majority of property owners, and the work was discontinued because it appeared that a majority had not petitioned, the city was held to be liable to pay for the services of an inspector employed by it for the work, on the ground that there was an implied guaranty that the petition was sufficient. Bill *v.* Denver, 29 Fed. Rep. 344. See also Cronan *v.* Municipality, 5 La. An. 537, where by the construction of the contract, the city was held liable for the whole expense, the proprietors having refused to make payment. A contractor failing, for *want of power* in a city, to be able to get his pay from special assessments, the city was held liable to him, it being regarded as guaranteeing that it possessed the specific powers relied on by the contractor for his compensation. Maher *v.* Chicago, 38 Ill. 266 (1865); Scofield *v.* Council Bluffs, 68 Iowa, 695; Bucroft *v.* Council Bluffs, 63 Iowa, 646. But see Chicago *v.* People, 48 Ill. 416, where the first case is explained and distinguished. See also Reilly *v.* Philadelphia, 60 Pa. St. 467; Sleeper *v.* Bullen, 6 Kan. 300 (1870); Chicago *v.* People, 56 Ill. 327; Lowden *v.* Cincinnati, 2 Disney (Ohio), 203. Right of *contractor to sue the corporation* where, in consequence of its *neglect*, it would be nugatory to proceed against the owners of the property. See Michel *v.* Police Jury, 9 La. An. 67; Newcomb *v.* Same, 4 Rob. La. 233; Michel *v.* Same, 3 La. An. 123; Leavenworth *v.* Mills, 6 Kan. 288 (1870); distinguished, Casey *v.* Leavenworth, 17 Kan. 189. Compare Reock *v.* Newark, 33 N. J. L. 129. Further, as to *local improvements*, see chap. xix.; *post*, sec. 810; *supra*, secs. 459, 467. In Memphis *v.* Brown, 20 Wall. 289 (1873), it was held that under its charter the city had full power to make paving contracts, and to pay either in cash or in bonds, or both, and to guarantee payment of the assessment bills against abutters. See also, Saxton *v.* St. Joseph, 60 Mo. 153 (1875). *Towers for electric lights* held not "local improvements," where the lighting system is not owned by the city. Putnam *v.* Grand Rapids, 58 Mich. 416.

[2] New Albany *v.* Sweeney (construing General Towns and Cities Act), 13 Ind. 245 (1859); Lucas *v.* San Francisco, 7 Cal. 463; Lovell *v.* St. Paul, 10 Minn. 290. Contracts with municipal corporations are construed with reference to the chartered or corporate powers of the city. 13 Ind. 245, *supra*.

If the *municipal corporation agrees with the contractor to collect* the assessments from the abutting owners, a failure to do so will render it liable. Morgan *v.* Dubuque, 28 Iowa, 575 (1870). See, however, Beard *v.* Brooklyn, 31 Barb. (N. Y.) 142; Saxton *v.* St. Joseph, 60 Mo. 153

§ 481 (401). **Contracts for Local or Public Improvements.** — A city charter required the *consent of a majority of property-owners* to make certain improvements, which, when made, were chargeable upon the *adjacent property*. An ordinance provided that contractors doing such work should look to the adjacent property, and not to the city, for their pay. Under these circumstances, the city entered into a contract with the plaintiff to grade a certain street, the plaintiff agreeing that he should receive his pay from the adjoining property. The plaintiff performed the work; and, inasmuch as the adjacent owners had never given their consent to the making of the improvement, he sued the city on the *contract*, to recover for the work done; and it was held that the action could not be maintained.[1]

(1873); Saxton *v.* Beach, 50 Mo. 488 (1872). A creditor of a municipality is not obliged to wait, before he sues, until the money can be collected from the land-owners benefited, and on whom the charter imposes the expense of the improvement whence his claim accrued. Little *v.* Union Township Committee, 40 N. J. L. 397.

[1] Leavenworth *v.* Rankin, 2 Kan. 357 (1864); Swift *v.* Williamsburg, 24 Barb. (N. Y.) 427; Goodrich *v.* Detroit, 12 Mich. 279; Johnson *v.* Common Council, 16 Ind. 227; New Albany *v.* Sweeney, 13 Ind. 245; Moylan *v.* New Orleans, 32 La. An. 673.

Where the *contractor has agreed to look for payment* to the lot benefited, or to the owner, he cannot hold the city, unless it may be in cases where the whole proceeding is void, or the city neglects its duty. Kearney *v.* Covington, 1 Met. (Ky.) 339. The subject is very fully discussed and the previous cases in the State commented on in Craycraft *v.* Selvage, 10 Bush (Ky.), 696 (1874); Casey *v.* Leavenworth, 17 Kan. 189 (1876); Memphis *v.* Brown (an important case), 20 Wall. 289 (1873); Smith *v.* Milwaukee, 18 Wis. 63 (1864); Finney *v.* Oshkosh, *Ib.* 220; Chicago *v.* People, 48 Ill. 416; Ruppert *v.* Baltimore, 23 Md. 184; Louisville *v.* Henderson, 5 Bush (Ky.), 515 (1869).

A city advertised for proposals to do certain public work, and the plaintiff made proposals, which were accepted, without qualification, by an entry on city records; and it was decided that the statement in the published notice, "the expense of the work to be assessed," &c., was part of the contract, no other provision for payment having been made, and that the plaintiff could not maintain an action against the city until after the assessment and collection of his compensation, or until it or its officers failed to proceed with reasonable diligence, after the expense of the work was ascertained, to make and collect an assessment, and to pay over money thus collected. Hunt *v.* Utica, 18 N. Y. 442 (1858).

Extent of recovery by contractor against abutter where the work is done in a manner inferior to that stipulated for in the contract. Creamer *v.* Bates, 49 Mo. 523 (1872).

Further as to the *rights and remedies of the contractor*, of the property-owner, and the liabilities of the municipal corporation. Memphis *v.* Brown, 20 Wall. 289 (1874); Smith *v.* Milwaukee, 18 Wis. 63; Foote *v.* Same, *Ib.* 270; Bond *v.* Newark, 19 N. J. Eq. 376; Fletcher *v.* Oshkosh, 18 Wis. 228, 232; Palmer *v.* Stump, 29 Ind. 329; McSpedon *v.* New York, 7 Bosw. (N. Y.) 601; Reilly *v.* Philadelphia, 60 Pa. St. 467; Whalen *v.* La Crosse, 16 Wis. 271; Flournoy *v.* Jeffersonville, 17 Ind. 169; Creighton *v.* Toledo, 18 Ohio St. 447; Goodrich *v.* Detroit, 12 Mich. 279; Buffalo *v.* Holloway, 7 N. Y. (3 Seld.) 493; Storrs *v.* Utica, 17 N. Y. 104; Leavenworth *v.* Mills, 6 Kan. 288 (1870); followed, Leavenworth *v.* Stille, 13 Kan. 539 (1874), and distinguished Casey *v.* Leavenworth, 17 Kan. 189 (1876); Sleeper *v.* Bullen, 6 Kan. 300; Lansing *v.* Van Gorder, 24 Mich. 456 (1872); *post*, chapter on Taxation and Local Improvements; *supra*, sec. 460; *infra*, sec. 810; Hendrick *v.* West Springfield, 107 Mass. 541; Mayer *v.* Mayor, &c. of New York, 63 N. Y. 455 (1875); Tone *v.* Mayor, &c. of New York, 70 N. Y. 157 (1877). Assignment of contract. McCubbin *v.* Atchison, 12 Kan. 166; McGlue *v.* Philadelphia, 10 Phila. (Pa.) 348; Perkinson *v.* St. Louis, 4 Mo. App. 322. Where a contractor receives assessment bills in payment, with the right to use the name of the city in filing liens against the abutting owners, such owners may defend by questioning the character of the work though they are not nominal parties to the contract. Erie City *v.* Butler, 120 Pa. St. 374 (1888).

§ 482 (402). **Same subject.** — It has been several times decided that where the expense of making a local improvement is not to be raised by a general tax, but solely upon the property benefited, a *failure of the corporation*, though it is only the agent of the owners to be assessed, *to discharge its duty*, by making the necessary assessment, or its unreasonable delay in collecting and paying over the money, gives the contractor a right to recover his compensation in an action against the corporation. The cases on the point are conflicting.[1] The right to a general judgment should, in our opinion,

An ordinance of the city of Louisville ordained "that no contract should be binding on the city until it is approved by *both* boards of the general council, and this shall be necessary to make a contract complete and binding upon the city." A contract was made for a certain street improvement, which was signed by the mayor, but was never approved by both boards, but by one of them only. If the contract had been executed as required by the ordinance, the contractor would have been entitled to recover against the adjacent property-holders the agreed price. It was conceded that he could not recover against them, because the contract had not been thus executed. He thereupon sought to make the city liable for the work done; but the Court of Appeals, distinguishing the case from Kearney *v.* Covington, 1 Met. (Ky.) 345, held that no contract binding on the city was ever made, and that he could not recover, there having been no ratification of the contract. Murphy *v.* Louisville, 9 Bush (Ky.), 189 (1872). *Quantum meruit* will not lie against a city for materials furnished for a public work under a contract which is void as not in conformity with statutes requiring such contracts to be made in a particular manner. Bigler *v.* New York, 5 Abb. (N. Y.) N. Cas. 51. When city not liable on contracts of police and school boards, see Swift *v.* New York, 17 Hun (N. Y.), 518; Utica *v.* Miller, 62 Ind. 230; Jarvis *v.* Shelby, 62 Ind. 257; Crane *v.* Urbana, 2 Ill. App. 559.

As to implied municipal liability, see the important opinion of the United States Supreme Court in Louisiana (City of) *v.* Wood, 102 U. S. 294; compare Litchfield *v.* Ballou, 114 U. S. 190. *Supra*, secs. 460, 461, and notes.

[1] Beard *v.* Brooklyn, 31 Barb. (N. Y.) 142 (1860). See Goodrich *v.* Detroit, 12 Mich. 279 (1864); Cumming *v.* Mayor, &c. of Brooklyn, 11 Paige (N. Y.) Ch. 596 (1845); Baker *v.* Utica, 19 N. Y. (5 Smith) 326 (1859); Green *v.* Mayor, &c. of New York, 5 Abb. Pr. (N. Y.) 503. See, generally, as to assessments for public works, Doughty *v.* Hope, 3 Denio (N. Y.) 249; Manice *v.* New York, 8 N. Y. 120; People *v.* New York, 5 Barb. (N. Y.) 43; 8 Barb. 95; 23 Barb. 390. Where the contractor agreed with the city to take his pay out of assessments when collected, but the city and its officers failed to exercise its duty and power to levy and collect the assessments, it was held that the city was liable to an action by the contractor for the damages for such neglect of duty, *i. e.*, the contract price, he having performed the contract on his part. Reilly *v.* Albany, 112 N. Y. 30 (1889), approving Cumming *v.* Brooklyn, *supra;* Sage *v.* Brooklyn, 89 N. Y. 189 (1882); McCor-

be limited, in any event, to cases where the corporation can afterwards reimburse itself by an assessment. For why should all be taxed for the failure of the council to do its duty in a case where the contractor has a plain remedy, by *mandamus*, to compel the council to make the necessary assessment and proceed in the collection thereof with the requisite diligence?[1]

§ 483 (403). **Same subject. Corporate Control by Stipulation.** — An agreement by a contractor to execute a public improvement, *under the general direction and supervision* of a committee of a city, makes such committee — acting reasonably and honestly, not arbitrarily and capriciously — exclusively the judge, not only as to materials and manner, but also as to the time of doing the work.[2] But where

mack *v.* Brooklyn, 108 N. Y. 49; Galveston *v.* Heard, 54 Tex. 420. Where a city fails to levy a tax, or refuses to issue tax warrants in payment of a contract for grading and improving streets, and otherwise neglects to provide means, the city is liable, and the contractor may, in an action, recover the amount due. Atchison *v.* Byrnes, 22 Kan. 65; Craycraft *v.* Selvage, 10 Bush (Ky.), 696 (1874). In principle sustaining the view suggested in the text: Reock *v.* Newark, 33 N. J. L. 129; *post*, chap. xxiii., note. And see opinion of *Field*, C. J., in Argenti *v.* San Francisco, 16 Cal. 255, 282 (1860); *post*, chap. xx., on Mandamus. Where the city council can only legislate in conjunction with the mayor as part of the law-making power, if the council order local improvements by a resolution without the signature or concurrence of the mayor, and the work is done by a contractor under such authority, he cannot recover of the abutter (Saxton *v.* Beach, 50 Mo. 488, 1872), nor from the city, it seems, where the charter declares that the city shall in no manner be liable for local improvements. Saxton *v.* St. Joseph, 60 Mo. 153 (1875).

[1] Text approved. Town of Tipton *v.* Jones, 77 Ind. 307; see, however, Reilly *v.* Albany, *supra*.

[2] Chapman *v.* Lowell, 4 Cush. (Mass.) 378 (1849), relating to drains in the streets of the city. Certain wells were, by contract, to be constructed under the supervision and to the satisfaction of a specific city officer; they were so constructed and approved, and it was held that the city was concluded by the action of the officer. Omaha *v.* Hammond, 94 U. S. 98 (1876). As to *power of chancery to correct mistake* of the engineer or other person whose decision both parties to the contract have agreed to abide by, see Railroad Co. *v.* Veeder, 17 Ohio, 385. Where there is a condition precedent that contractor shall have certificate of performance by corporation. See Bowery National Bank *v.* Mayor, &c. of New York, 63 N. Y. 336 (1875); Cameron, *In re*, 50 N. Y. 502 (1872). Condition precedent that payment was not to be made to contractor until confirmation of the assessment, and whose duty to have confirmation made, construed. Tone *v.* Mayor, &c. 70 N. Y. 157 (1877). The contract between the contractor and the city provided that the contractor should be entitled to payment when the work was accepted by the Board of Public Works, and it was held that the contractor, who had, in fact, completed his work, might recover of the abutter, although a majority of the board refused or neglected to examine or accept the work. Neenan *v.* Donoghue, 50 Mo. 493 (1872). It is held that the acceptance by the city authorities of work done under a contract for a street improvement is only *prima facie* evidence that the work has been done in substantial compliance with the terms of the contract. Gulick *v.* Connely, 42 Ind. 134 (1873); but see Omaha *v.* Hammond, *supra*.

a written contract has been entered into between a municipal corporation and a contractor, a general provision of an ordinance that the work shall be done under the directions of certain officers confers no authority upon them essentially to change or modify the provisions of the contract.[1] If, in a contract for a public work, the *corporation employer reserves the right to make alterations* in the form, dimensions, or materials of the work, the contractor is bound by any such alterations made in good faith; but such a clause does not authorize the employer to annul the agreement, or to stop the work in an unfinished state.[2]

§ 484 (404). **Evidences of Indebtedness; Negotiable Bonds.** — We have elsewhere discussed the power of the legislature to authorize the issue of municipal bonds in aid of railway and other like enterprises,[3] and have also considered the express and implied power of municipal corporations to borrow money and issue obligations therefor.[4] It appropriately belongs to this place, however, to notice more at length the *different kinds of corporate evidences of debt*, and the rights and remedies of the holders thereof, and to this general subject will the remainder of the present chapter be devoted.

§ 485. **Two Great Classes of Municipal Securities: 1. Ordinary Warrants; 2. Negotiable Bonds; Form, Execution, and Attributes of each.** — It is material to bear in mind the *different kinds* of corporate evidences of debt. These are of two general classes. FIRST, *there is the usual municipal or county warrant or order*. These are commonly drawn by one or more of the officers upon the treasurer, directing him to pay to the person named, or *bearer*, a given sum of

[1] Bonesteel *v.* Mayor, &c. of New York, 22 N. Y. 162 (1860); Bond *v.* Newark, 4 C. E. Green (19 N. J. Eq.), 376; compare Omaha *v.* Hammond, 94 U. S. 98 (1876). But the authority of the corporation may be implied from its having by its own act rendered extra materials necessary to conform the work to the conditions of the contract. Messenger *v.* Buffalo, 21 N. Y. 196 (1860); see, also, Stuart *v.* Cambridge, 125 Mass. 102. Effect of certificate of approval of a city officer where, by the contract, the work is to be done to his approval. Bond *v.* Newark, 4 C. E. Green (19 N. J. Eq.), 376.

As to reserved right *to discontinue work* and annul contract. Bietry *v.* New Orleans, 24 La. An. 21 (1872).

[2] Clark *v.* Mayor, &c. of New York, 4 Comst. (N. Y.) 338 (1850). Remedy of contractor, and measure of damages in such a case, considered. *Ib.* It is held, in *Vermont*, that a person who has contracted with the proper town officers to build a road cannot proceed with his contract after notice of an appeal, and recover of a town therefor. This decision is based upon a construction of the statute of that State by which the appeal is intended to stay or suspend all proceedings toward building the road, and the contractor was bound to take his contract subject to the contingency of the appeal allowed by law. Taft *v.* Pittsford, 28 Vt. 286 (1856).

[3] *Ante*, sec. 119 *et seq.*, and see *post*, sec. 511 *et seq.*

[4] *Ante*, sec. 117 *et seq.*; *supra*, sec. 470, note.

money. The power to issue them, and the mode in which it is to be exercised, are usually prescribed by charter or statute. They are vouchers or "necessary instruments for carrying on the machinery of municipal administration and for anticipating the collection of taxes,"[1] out of which they must be paid. The power to issue such warrants or orders may, where not expressly conferred or denied, be *implied* as incidental to carrying out the objects of a municipal or public corporation. SECOND, *there is the municipal bond, negotiable in form*, payable at a future day, intended for sale in the market, issued under *express* authority of the legislature.[2]

§ 486. **Municipal Bonds.** — Such bonds, negotiable in form, notwithstanding they are under seal, are clothed with all the attributes of commercial paper, pass by delivery or indorsement, and are not subject to equities (where the *power* to issue them exists) in the hands of holders for value before due, without notice. Such bonds usually have coupons attached, which partake of the nature of the bond, are likewise negotiable, may be detached and held separately from the bond, and the holder may sue thereon in his own name, without producing or being interested in the bonds to which they were originally attached. Such securities are made to raise money by their sale, and this object would be defeated if they were subject to equities (where the power to issue exists) in the hands of *bona fide* holders. The propositions in this section of the text are so well settled as to be no longer open to question.[3]

[1] *Per Bradley*, J., in Nashville *v.* Ray, 19 Wall. 468, 477 (1873).

[2] The legislature may confer upon municipal bonds all the characteristics of commercial paper, such as negotiability and protection in the hands of innocent holders for value. Alvord *v.* Syracuse Savings Bank, 98 N. Y. 599.

[3] Mercer County *v.* Hacket, 1 Wall. 83 (1863), denying Diamond *v.* Lawrence County, 37 Pa. St. 353; Meyer *v.* Muscatine, 1 Wall. 384; Gelpecke *v.* Dubuque, *Ib.* 175; Moran *v.* Miami County, 2 Black, 732 (1862); Clapp *v.* Cedar County, 5 Iowa, 15; Morris Canal Co. *v.* Fisher, 1 Stockt. Ch. (N. J.) 667 (1855); Craig *v.* Vicksburg, 31 Miss. 216; Jackson *v.* Railroad Co., 48 Me. 147; s. c. 2 Am. Law Reg. (N. S.) 585; s. c. *Ib.* 748, and note of Judge *Redfield;* Chapin *v.* Railroad Co., 8 Gray (Mass.), 575; Lynde *v.* Winnebago County (Iowa court-house bonds), 16 Wall. 6 (1872); Gould *v.* Sterling, 23 N. Y. 464; s. c. 1 Am. Law Reg. (N. S.) 290, and note; Clark *v.* Des Moines, 19 Iowa, 199, 213 (1865), and cases cited; White *v.* Railroad Co., 21 How. 575; Bank *v.* Railroad Co., 3 Kern. (13 N. Y.) 599; s. c. 4 Duer, 480; Bank *v.* Rome, 19 N. Y. 20; Aurora *v.* West, 22 Ind. 88; Comm'rs *v.* Bright, 18 Ind. 93; Barrett *v.* Schuyler County, 44 Mo. 197; DeVoss *v.* Richmond, 18 Gratt. 338; s. c. 7 Am. Law Reg. (N. S.) 589; Lynchburg *v.* Slaughter, 75 Va. 57; Durant *v.* Iowa County, Woolworth C. C. R. 69; State *v.* Madison, 7 Wis. 688; Clark *v.* Janesville, 10 Wis. 136 (1859); Maddox *v.* Graham, 2 Met. (Ky.) 56 (1859); Kerr *v.* Corry, 105 Pa. St. 282; Ackley School District *v.* Hall, 113 U. S. 135; New Providence *v.* Halsey, 117 U. S. 336; Oubre *v.* Donaldsonville, 33 La. An. 386; Martin *v.* Police Jury, 32 La. An. 1022.

§ 487 (406). **Ordinary Corporation Orders or Warrants.** — But *ordinary city, county, and town orders or warrants* are in some respects *different from bonds* of the character just mentioned, and, in the author's judgment, the better opinion, as well as decided weight of authority, is that there is *no implied power* in the officers of a town, county, or city corporation to issue warrants or orders which shall be free from equities in the hands of holders; that the existence of such a power is not necessary as an incident to powers ordinarily granted, or to carry out the purposes of the corporation, and would be attended with abuse and fraught with danger. Ordinary warrants or orders, negotiable in form, may be made by the proper officers; and in many of the States such instruments may be

Municipal bonds payable to bearer are negotiable by delivery. Gardner *v.* Haney, 86 Ind. 17; Farr *v.* Lyons, 13 Fed. Rep. 377. *Post*, sec. 513.

COUPONS. *Coupons* attached to such bonds *are negotiable*, and the *holder may sue thereon* in his own name without being interested in or producing the bonds to which they were originally attached. Thomson *v.* Lee County, 3 Wall. 327 (1865); Murray *v.* Lardner, 2 Wall. 110 (1864); Knox County *v.* Aspinwall, 21 How. 539 (1858); Johnson *v.* Stark County, 24 Ill. 75; Kenosha *v.* Lamson, 9 Wall. 478 (1869); Chicago, B. & Q. R. Co. *v.* Otoe County, 1 Dillon C. C. R. 338. *Form of coupons, &c., post*, sec. 512, note. Judgment in suit on coupons or for interest, when a bar to subsequent suit. Louisiana State Bank *v.* Orleans Nav. Co., 3 La. An. 294; Beloit *v.* Morgan, 7 Wall. 619; Bissell *v.* Spring Valley Township, 124 U. S. 225; compare Cromwell *v.* Sac County, 96 U. S. 51.

An action on a coupon is *not barred* in less time than the bond to which it was originally attached. Kenosha *v.* Lamson, *supra;* Lexington *v.* Butler, 14 Wall. 282 (1871). Explained, Clark *v.* Iowa City, 20 Wall. 583 (1874). *How declared on.* Ring *v.* County, 6 Iowa, 265; Railroad Co. *v.* Otoe County, *supra;* Wiley *v.* Board, &c., 11 Minn. 371. The better practice, in the author's judgment, is to set out in the declaration the bond to which the coupon in suit was attached, or to allege its legal effect and recitals.

Municipal corporations may plead the *statute of limitations* in actions against them on their bonds payable at a fixed time. De Cordova *v.* Galveston, 4 Tex. 470 (1849); see Underhill *v.* Sonora Trs., 17 Cal. 172; Baker *v.* Johnson Co., 33 Iowa, 151; *post*, sec. 668 *et seq.*

The *statute of limitations* commences to run on coupons *detached* from the bonds and negotiated separately, from the time the coupons mature, and the operation of the statute, in such a case, is not deferred until the maturity of the bonds to which the coupons belonged. This point has been expressly adjudged by the Supreme Court in Clark *v.* Iowa City, 20 Wall. 583 (1874), and the prior decisions, which had been supposed to hold otherwise, explained to mean only that when the bonds were specialties, the coupons, though detached, partook of the same nature, and therefore the same statute of limitations applied to both the coupons and the bonds; that is, if the bonds were specialties, so were the coupons, and the statute of limitations as to sealed instruments, and not the more restricted statute applicable to simple contracts, applied. Kenosha *v.* Lamson, 9 Wall. 477; Lexington *v.* Butler, 14 Wall. 282. The statute also begins to run on coupons from the time they respectively mature, *although they remain attached to the bond* which represents the principal debt. Amy *v.* Dubuque, 98 U. S. 470; Nash *v.* Eldorado Co., 24 Fed. Rep. 252. As to negotiability of coupons which are due detached from bonds not due. Thompson *v.* Perrine, 106 U. S. 589. Payment of bonds does not extinguish detached coupons not paid. Bank *v.* Hartford, &c. R. R. Co., 8 R. I. 375.