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.

transferred by delivery or indorsement, and the holder sue thereon in his own name; yet they are not commercial or negotiable paper in the hands of holders, so as to exclude inquiry into the legality of their issue, or to preclude defences thereto.[1] Ordinary warrants drawn by one officer on another officer of the same corporation are not bills of exchange, as such bills involve the idea of two parties; but are orders by the corporation on itself, — mere directions to the treasurer to pay the amount to the bearer.[2]

[1] Emery *v.* Mariaville, 56 Me. 315; Shirk *v.* Pulaski Co., 4 Dillon, 209, 213 (1877), and cases cited; Clark *v.* Des Moines, 19 Iowa, 199, 211–214 (1865), and cases cited; Clark *v.* Polk County, *Ib.* 248; Mathes *v.* Cameron, 62 Mo. 504 (1876); People *v.* County, 11 Cal. 170 (1858); Sturtevant *v.* Liberty, 46 Me. 457; Smith *v.* Cheshire, 13 Gray (Mass.), 318 (1859); Andover *v.* Grafton, 7 N. H. 298 (1834); compare, however, Bank *v.* Farmington, 41 N. H. 32; Dalrymple *v.* Whittingham, 26 Vt. 345; Inhabitants *v.* Weir, 9 Ind. 224 (1857); Connersville *v.* Connersville Hydraulic Co., 86 Ind. 184; School District *v.* Thompson, 5 Minn. 280 (1861); s. p. Goodnow *v.* Commissioners, 11 *Ib.* 31 (1865); Hyde *v.* Franklin, 27 Vt. 185 (1855); approved, Taft *v.* Pittsford, 28 Vt. 286; Halstead *v.* Mayor, 3 Comst. (3 N. Y.) 430; s. c. 5 Barb. 218; The Floyd Acceptances, 7 Wall. 666, and reasoning of Mr. Justice *Miller*; People *v.* Gray, 23 Cal. 125; *Ib.* 447; Hubbard *v.* Lyndon, 28 Wis. 674 (1871). Warrants, duly signed and sealed, are *prima facie* valid, but open to defences. Commissioners *v.* Keller, 6 Kan. 510; Commissioners *v.* Day, 19 Ind. 540 (1862); People *v.* Johnson, 100 Ill. 537; *infra*, sec. 502.

Transferee or holder may sue in his own name. Emery *v.* Mariaville, 56 Me. 315; Crawford County *v.* Wilson, 2 Eng. (7 Ark.) 214; Clark *v.* Des Moines, 19 Iowa, 199; Campbell *v.* Polk County, 3 Iowa, 467; Clark *v.* Polk County, 19 Iowa, 248; Int. Bank *v.* Franklin Co., 65 Mo. 105 (1877). Otherwise in *Massachusetts*. Smith *v.* Cheshire, 13 Gray (Mass.), 318, treating a town order, payable to bearer, as a mere *chose in action*, which could not be enforced in the name of an assignee. s. p. O'Donnell *v.* City, 7 Phil. (Pa.) 234. In many of the States, "the real party in interest" may sue in his own name. In *Vermont*, as to right of holder of town and county orders to sue in his own name, see Dalrymple *v.* Whittingham, 26 Vt. 345; compare Taft *v.* Pittsford, 28 Vt. 286, 289; Hyde *v.* Franklin, 27 Vt. 185. *Right of indorsee to sue or enforce by mandamus in his own name.* Kelly *v.* Mayor, &c., 4 Hill (N. Y.), 263; Clark *v.* School District, 3 R. I. 199; Moss *v.* Oakley, 2 Hill (N. Y.), 265; Commissioners *v.* Day, 19 Ind. 450; Dively *v.* Cedar Falls, 21 Iowa, 565; Justices *v.* Orr, 12 Ga. 137. Statutory form of assignment must be observed. Int. Bank *v.* Franklin Co., 65 Mo. 105 (1877); *post*, chap. xx. sec. 849.

[2] Miller *v.* Thompson, 3 Man. & Gr. 576; Fairchild *v.* Ogdensburg, C. & R. Co., 15 N. Y. 337; Bull *v.* Sims, 23 N. Y. 570, 572; Clark *v.* Polk County, 19 Iowa, 247; Hasey *v.* White Pigeon Beet Sugar Co., 1 Doug. (Mich.) 193; Dana *v.* San Francisco, 19 Cal. 486; Bibb County Inf. C. Justices *v.* Orr, 12 Ga. 137. Municipal certificates of indebtedness are not "*bills of credit*" within the meaning of the prohibition (art. 1, sec. 10) of the National Constitution (Baltimore *v.* Board of Police, 15 Md. 376, 1859), and possess no elements of commercial paper. Chandler *v.* Bay St. Louis, 57 Miss. 327. As *a county warrant* is an instrument by which the money, property, or rights of a county may be affected, it is such an one as *may be forged*. State *v.* Fenley, 18 Mo. 445 (1853). Requisites of indictment in such a case. *Ib.* Without the sanction of the county board the clerk has no authority to issue, or the treasurer to pay or countersign, any warrant. People *v.* Klopke, 92 Ill. 134.

Bonds issued by the city of Little Rock on bank-note paper, engraved with vignettes, in the similitude of bank-bills, intended to circulate as money, were held to be illegal and void under the legislation of *Arkansas*, both by the State and Federal courts. Lindsey *v.* Rottaken, 32 Ark. 619 (1878); Jones *v.* Little Rock, 25 Ark. 301 (1868); Merchants' Nat. Bank *v.* Little Rock, 5 Dillon, 299 (1878); s. c. 98 U. S. 308. In the last-named case it was decided that this illegal money having been paid out by the city to *bona fide* creditors for valid claims, and the city having afterwards called it in, and by the action of the municipal council acknowledged an indebtedness for the amount to the holders and promised to pay the same, it was liable on such acknowledgment and new promise. In Jones *v.* Little Rock, *supra*, the court refused to interfere by injunction at the instance of a taxpayer to prevent that city from issuing paper of this character.

Liability as respects scrip issued to circulate as money. Thomas . Richmond, 12 Wall. 349 (1870), and in which the city was held not to be liable. See on this subject, *supra*, sec. 443, note, sec. 448, and, also, Alleghany City *v.* McClurkan, 14 Pa. St. 81 (1850); Jones *v.* Little Rock, 25 Ark. 301; Miller *v.* Lynchburg, 20 Gratt. (Va.) 330 (1871); Smith *v.* New Orleans, 23 La. An. 5 (1871); Clark *v.* Des Moines, 19 Iowa, 199 (1865); Dively *v.* Cedar Falls, 21 Iowa, 565; s. c. 27 Iowa, 227; Black *v.* Cohen, 52 Ga. 621 (1874); Cheeney *v.* Brookfield, 60 Mo. 53 (1874); Hackettstown *ads.* Swackhamer, 37 N. J. L. 191 (1874); Lucas *v.* Pitney, 3 Dutch. (N. J.) 221.

[1] McCullough *v.* Moss, 5 Denio (N. Y.), 567; Straus *v.* Eagle Insurance Co., 5 Ohio St. 59; Mott *v.* Hicks, 1 Cow. (N. Y.) 513; Attorney-General *v.* L. & F. Ins. Co., 9 Paige (N. Y.), Ch. 470; 2 Kent Com. 299; 1 Parsons N. & B. 165; Clark *v.* Des Moines, 19 Iowa, 212; *ante*, secs. 117, 118; Lucas *v.* Pitney, 3 Dutch. (N. J.) 221. Morawetz on Corp. (2d ed.) secs. 350–352. *Post*, sec. 507.

[2] Kelley *v.* Brooklyn, 4 Hill (N. Y.), 263; Clark *v.* Des Moines, 19 Iowa, 199 213; Came *v.* Brigham, 39 Me. 39; Clarke *v.* School District, 3 R. I. 199; Goodnow *v.* Remsey Co. Comm'rs, 11 Minn. 31; Burrton *v.* Harvey Co. Savings Bank, 28 Kan. 390; Carleton *v.* Washington, 38 Kan. 726; Little Rock *v.* Merchants' Nat. Bank, 98 U. S. 308, citing and approving text; *ante*, secs. 117–127. In *Indiana* the common-law doctrine that a corporation could not make a

§ 488 (407). **Power to make and issue Negotiable Paper.** — *Banking and trading corporations* have implied or incidental power to make *negotiable paper*;[1] and the same rule has, in some cases, been applied to municipal corporations. The ordinary warrants of such corporations, it is clear, do not cut off equities, and it is doubtful whether they have an *incidental power* to make paper which shall have this effect.[2] The subject has been discussed in a previous chapter.[3]

[3] The author's views are expressed and the cases on the subject are referred to, *ante*, sec. 117 *et seq.*, and are approved in Parsons *v.* Monmouth, 70 Me. 262 (1879).

Statutory power "to issue county orders" gives no authority *to issue negotiable bonds* payable at a future day, with interest coupons attached. The difference is substantial. Goodnow *v.* Comm'rs, 11 Minn. 31 (1865). County Comm'rs *v.* Carter, 2 Kan. 115 (1860); Hull *v.* County, 12 Iowa, 142. *Statutory form* of county warrants *held to be directory*, and a mere departure from this form is no defence to an action on the warrant. Young *v.* Camden County, 19 Mo. 309 (1854). A contract made by a county with another party, in which the county agrees to pay for services rendered, in county warrants, is in effect a contract payable in money, and is not void. Babcock *v.* Goodrich, 47 Cal. 488 (1874).

Express authority to a city to subscribe for stock, to be paid for by "*certificates of loan*," authorizes it to issue negotiable bonds with coupons attached, such "cer-

§§ 489–499 (408). **Liability of Indorser of Warrants.** — Warrants or orders of a municipal corporation for the unconditional payment of money to a person named, or order, or to bearer, have the character of negotiable paper, so far, at least, as to render parties indorsing them *liable as indorsers*.[1]

promissory note is exploded, and corporations can now make contracts *intra vires* in writing not under seal. Municipal and *quasi* corporations can make in a proper case a promissory note (citing Ketchum *v.* Buffalo, 14 N. Y. 356; Railroad Co. *v.* Evansville, 15 Ind. 395); a promissory note of a school township in payment for building a school-house held valid. Sheffield School Tp. *v.* Andress, 56 Ind. 157 (1877). See Douglass *v.* Virginia City, 5 Nevada R., 147 (1869), as to power to make notes unless specially restricted. Power to fund debts and to issue new bonds, notes, or evidences of indebtedness. Galena *v.* Corwith, 48 Ill. 423. An action cannot be maintained against a city on a demand payable out of a fund over which its charter gives a board of education control to the exclusion of the municipal officers. Crane *v.* Urbana, 2 Ill. App. 559. That public corporations have no authority to make and place in market commercial paper without express power. See Hewitt *v.* School Dist., 94 Ill. 528; Supervisors *v.* Farwell, 25 Ill. 181; Clark *v.* Hancock Co., 27 Ill. 305; Marshall Co. *v.* Cook, 38 Ill. 44; Wiley *v.* Silliman, 62 Ill. 170; Harding *v.* Railroad Co., 65 Ill. 90; McWhorter *v.* People, 65 Ill. 290; Big Grove *v.* Wells, 65 Ill. 263; Williamsport *v.* Commonwealth, 84 Pa. St. 487 (1877), quoted *ante*, secs. 120, 121. *Ante*, secs. 117–125. *Post*, sec. 507, 507 *a*.

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tificates of loan" and "bonds" being considered identical. Amey *v.* Allegheny City, 24 How. (U. S.) 364 (1860); see Commonwealth *v.* Pittsburgh (power "to borrow money"), 34 Pa. St. 496, 511; Same *v.* Same, 41 Pa. St. 278. Power by public corporations to issue negotiable bonds may be inferred from the power to subscribe for stock in railroad companies and to make payment for it in bonds. Curtis *v.* Butler County, 24 How. (U. S.) 435; Bushnell *v.* Beloit, 10 Wis. 195. Express legislative authority to a city to subscribe for stock in a railroad "as fully as any individual," authorizes the issue by the city of negotiable bonds in payment therefor. Seybert *v.* Pittsburgh, 1 Wall. (U. S.) 272 (1863); approving Commonwealth *v.* Same, 41 Pa. St. 278; Rogers *v.* Burlington (power to "borrow money for any public purpose"), 3 Wall. 654 (1865); Meyer *v.* Muscatine, 1 Wall. 385; Mitchell *v.* Burlington, 4 Wall. 270. By resolution, the council authorized the mayor to borrow money of a bank, and execute the *note* of the corporation therefor, instead of which he executed the *bond* of the corporation under the seal of the corporation. In an action on this bond by the payee, it was held that the corporation could plead *non est factum*, since the act of the mayor in executing a writing obligatory instead of a note did not bind the corporation. Little Rock *v.* State Bank, 3 Eng. (8 Ark.) 227; see Damon *v.* Granby, 2 Pick. (Mass.) 345; Randall *v.* Van Vechten, 19 Johns. (N. Y.) 60; Bank *v.* Patterson, 7 Cranch, 299; Head *v.* Prov. Ins. Co., 2 Cranch, 127. Where towns were required "to purchase" liquors, and the selectmen were indictable if they failed to make provision for executing the law, it was held that a town might give a negotiable note for liquors actually purchased, and that the town could not defend against it in the hands of a *bona fide* holder, on the ground that the liquors were sold in violation of the law of the State. Great Falls Bank *v.* Farmington, 41 N. H. 32 (1860). What an indorsee is bound to inquire about, stated. *Ib.* 42.

The general doctrines of the text in sections 485–488 are coincident with the views of the United States Supreme Court in the case of the Police Jury *v.* Britton, 15 Wall. 566 (1872), where it was held that county officers in *Louisiana*, with the usual powers of such officers, have *no implied authority to issue negotiable paper* (bonds with coupons), payable in the future, to raise money or to fund an existing debt, which will cut off equities in the hands of *bona fide* holders. Such a power is not necessarily incident to the power to make specified expenditures or improvements, though it may be implied from certain express powers, as, for example, the power to borrow money. After stating other instances in which the power has been implied, Mr. Justice *Bradley*, observes: "But in our judgment these implications should not be encouraged or extended beyond the fair inferences to be gathered from the circumstances of each case. It would be an anomaly, justly to be deprecated, for all our limited territorial boards, charged with certain objects of necessary local administration, to become fountains of commercial issues, capable of floating about in the financial whirlpools of our large cities." 15 Wall. 572. But see, on this point of the incidental power of municipal corporations to borrow money, and to issue commercial paper, the later case of Mayor of Nashville *v.* Ray, 19 Wall. 468 (1873); *ante*, sec. 117 *et seq.*, and notes; Sterling *v.* West Feliciana, 26 La. An. 59 (1874). *Post*, secs. 507, 507 *a*.

[1] Bull *v.* Sims, 23 N. Y. 570 (1861). In this case the action was by an indorsee against the defendant as indorser of the following instrument: —

MILWAUKEE, Aug. 1, 1859.

The treasurer will, on or before the 1st day of February next, pay to the order of E. Sims, fifty dollars, *out of any funds belonging to the city not before specially appropriated*, the same having been this day allowed for dredging, and chargeable to the general city fund.

H. L. PAGE, *Mayor*.
R. R. LYNCH, *Clerk*.

It was held that the defendant incurred the responsibility of an indorser of negotiable paper, and that the plaintiff was not bound to show the existence of funds in the city treasury sufficient to pay the warrants, and not specially appropriated at the time of its maturity. Campbell *v.* Polk County, 3 Iowa, 467; Hodges *v.* Shuler, 22 N. Y. 114; Fairchild *v.* Ogdensburgh, &c. Railroad Co., 15 N. Y. 337. Compare as to liability of indorser, Keller *v.* Hicks, 22 Cal. 457.

[2] Canal Bank *v.* Supervisors, 5 Denio (N. Y.), 517 (1848). In this case it was held that where, without any fraudulent intent, the holder of valid county orders exchanged them with the treasurer for others which were in fact paid, but which had never been allowed him in his accounts, the debt represented by the valid orders was not extinguished, and was a sufficient consideration to support a settlement with the county allowing it. As to illegal orders in hands of *bona fide* holder. Halstead *v.* The Mayor, &c. of New York, 3 Comst. (N. Y.) 430, affirming s. c. 5 Barb. 218; Mayor of Nashville *v.* Ray (important case), 19 Wall. 468 (1873). A municipal corporation is not liable for the increased face value of warrants which the clerk has fraudulently raised after issuance. Chandler *v.* Bay St. Louis, 57 Mich. 327. Payment to bearer in good faith exonerates the corporation. Sweet *v.* Carver Co., 16 Minn. 106 (1871).

[3] Benson *v.* Carmel, 8 Greenl. (8 Me.)

§ 500 (409). **Payment and Cancellation of Warrants.** — Payment by the treasurer or proper officer of a municipal corporation of its orders or warrants *ipso facto extinguishes* them. If lent, reissued, or put into circulation again by the officer, after he had once obtained credit therefor, they are not valid securities, not even, it seems, in the hands of an innocent holder.[2]

§ 501 (410). **Rights and Remedies of Holder of Warrants.** — A creditor of a town is not *bound to receive an order* on the treasurer, but may sue upon his original cause of action.[3] But if he

does receive such an order he is charged with the duty of presenting it to the treasurer upon whom it is drawn, or of alleging facts which excuse presentment, before he can maintain an action upon it. As such an instrument is, in effect, an order by the debtor on himself, if presented and payment be refused, the town is liable instantly, and without notice of non-payment.[1]

§ 502 (411). **Presumption of Liability.** — *County and city orders* signed by the proper officers *are prima facie binding and legal.* These officers will be presumed to have done their duty. Such orders make a *prima facie* cause of action. Impeachment must come from the defendant.[2]

§ 503. **Warrants not Negotiable Paper.** — Such warrants or orders drawn for ordinary municipal expenses *are not intended to have the*

112; Willey *v.* Greenfield, 30 Me. 452 (1849). No misapplication of a special fund by the officers of a municipal corporation can defeat the rights of creditors entitled to be paid therefrom. State *v.* Pilsbury, 30 La. An. 705.

[1] Varner *v.* Nobleborough, 2 Greenl. (2 Me.) 121, where *Mellen*, C. J., says: "No sound reason can be given why a town should be subjected to the perplexity of costs of an action before the payee of an order will do his duty and request the payment. . . . There is an implied engagement to conform to established usage, and present the order for payment." Benson *v.* Carmel, *supra;* Pease *v.* Cornish, 19 Me. (1 Appl.) 191 (1841). An action cannot be maintained on warrants drawn on a municipal treasurer, without allegation and proof of their presentation to him, or of facts which will excuse the presentation. Central *v.* Wilcoxen, 3 Col. 566; East Union *v.* Ryan, 86 Pa. St. 459. As to mode of presentment. Steel *v.* Davis County, 2 G. Greene (Iowa), 469; Campbell *v.* Polk County, 3 Iowa, 467. Where the payee has accepted county orders for a debt against the county, and has parted with such orders, he cannot sue the county for the original debt. Crawford County *v.* Wilson, 2 Eng. (7 Ark.) 214 (1846). See Allison *v.* Juniata County, 50 Pa. St. 351. An unpaid and dishonored warrant on the corporation treasurer is not, *prima facie* at least, an extinguishment or novation of the original debt. Goldschmidt *v.* New Orleans, 5 La. An. 436; Short *v.* New Orleans, 4 La. An. 281.

[2] Floyd Co. Comm'rs *v.* Day, 19 Ind. 450 (1862); Hamilton *v.* Newcastle & D. R. Co., 9 Ind. 359; Leavenworth County Comm'rs *v.* Keller, 6 Kan. 510 (1870); Clark *v.* Des Moines, 19 Iowa, 211 (1865); Cheeney *v.* Brookfield, 60 Mo. 53 (1875); Connersville *v.* Connersville Hydraulic Co., 86 Ind. 184. Such debts "do not stand on the footing of those contracted under a special *conditional grant of power.*" Comm'rs *v.* Day, *supra;* People *v.* Mead, 24 N. Y. 114; *ante*, chap. ix. sec. 213; *supra*, sec. 487. County warrants are valid instruments only when the board of supervisors had legal authority to issue them, or to contract the obligation on which they were founded, and are not binding when issued in violation of law or in fulfilment of a contract that the board was prohibited from making. See cases, *supra*, in this note; Sault Ste. Marie *v.* Van Dusan, 40 Mich. 429; Jefferson County *v.* Arrighi, 54 Miss. 668; Nash *v.* St. Paul, 11 Minn. 174; People *v.* Flagg, 17 N. Y. 589; Brady *v.* New York, 20 N. Y. 312; Hague *v.* Philadelphia, 48 Pa. 528. A law creating the liability of a county is a condition precedent to the exaction of payment from the county. Hess *v.* Pegg, 7 Nev. 23 (1871).

qualities of commercial paper, but are instruments authorized for convenient use in conducting the current and ordinary business of the corporation and as a means of anticipating its ordinary revenue. It would overwhelm municipalities with ruin to hold that such warrants or orders have the qualities of negotiable paper, especially that quality which protects an innocent holder for value from defences of which he has no notice, actual or constructive. All holders of such warrants or orders, even when payable to order or bearer, stand in the shoes of the payee, and their rights and remedies are often essentially different from those of the holders of authorized negotiable municipal bonds. Such is the sound doctrine, and such is the doctrine of the authorities almost without exception.[1]

Without express authority from the legislature *a municipality cannot discount its warrants* to its creditors so as to make them equivalent to cash, or issue warrants for more than the sum actually due the claimant; and as to the excess they are void, and the holder will be treated only as the equitable assignee of the valid legal claim of the payee.[2]

§ 504 (412). **Defences.** — A municipal corporation *is not estopped*, after a warrant upon its treasury has been issued, to set up the defence of *ultra vires, or fraud, or want or failure of consideration.*[3] And it may maintain a *bill in equity* to cancel warrants illegally

[1] Carroll Co. Sup. *v.* U. S. (nature of warrants and remedy), 18 Wall. 71; Shirk *v.* Pulaski County, 4 Dillon, 209, 213 (1877), and cases cited; Clark *v.* Des Moines, 19 Iowa, 199; Mayor of Nashville *v.* Ray, 19 Wall. 468; United States *v.* Miller County, 4 Dillon, 233 (1878).

[2] Shirk *v.* Pulaski County, 4 Dillon, 209 (1877); Goyne *v.* Ashley County, 31 Ark. 552 (1876); Bauer *v.* Franklin County, 51 Mo. 205 (1873). "The flagrant abuses," which, as *Wagner*, J., says, in the case last cited, would follow any other doctrine, are well exemplified in Shirk *v.* Pulaski County. Foster *v.* Coleman, 10 Cal. 278; Clark *v.* Des Moines, 19 Iowa, 199.

[3] Thomas *v.* Richmond (scrip to circulate as money), 12 Wall. 349 (1870); Webster County *v.* Taylor, 19 Iowa, 117 (1865); Clark *v.* Des Moines, *Ib.* 199; Clark *v.* Polk County, *Ib.* 248; Hodges *v.* Buffalo, 2 Denio (N. Y.), 110; Halstead *v.* New York, 3 N. Y. 430; Brown *v.* Utica, 2 Barb. (N. Y.) 104; Anthony *v.* Adams, 1 Met. (Mass.) 286. The allowance of a claim by a county board is not final and conclusive. Such allowance is *prima facie* evidence of the correctness of the claim; "but," says *Kingman*, C. J., "the settlement of an account by the county board is not more sacred than a settlement made by individuals." The court therefore held, and properly so, that the allowance of a claim by the county was not an *adjudication* in the sense that it would conclude the county as to the amount allowed when sued upon the warrant drawn in pursuance of such allowance. Comm'rs *v.* Keller, 6 Kan. 510; Nashville *v.* Ray, 19 Wall. 468 (1873); Shirk *v.* Pulaski County, 4 Dillon, 209 (1877); Cheeney *v.* Brookfield, 60 Mo. 53 (1875); *post*, chap. xxiii. Warrants may, it seems, be *usurious*. Clark *v.* Des Moines, *supra; post*, sec. 506, note.

issued.[1] Taxpayers may enjoin the issue of illegal warrants or scrip.[2]

§ 505 (413). **Payable out of a Particular Fund.** — If by law a particular claim *is to be paid out of a special fund*, a warrant or order issued therefor should be made payable out of such fund; if made payable from the treasury generally by the officers issuing it, the corporation is not bound by their act.[3] An order or warrant, concluding with the words "and charge the same to the account of Union Avenue," is payable out of the particular fund indicated, and is not a claim against the corporation.[4] But the distinction must be observed between orders payable out of a particular fund, and those which evidence a general corporate liability, but are directed to be charged to a particular account.[5]

[1] Pulaski County *v.* Lincoln, 4 Eng. (9 Ark.) 320 (1849); Webster County *v.* Taylor, 19 Iowa, 117; Paris Tp. Trs. *v.* Cherry, 8 Ohio St. 564 (1858); Glastenbury *v.* McDonald, 44 Vt. 450 (1872). In *Mississippi* a board known as the board of police are authorized by law to audit and allow, upon due proof, all claims against the county; and counties in that State cannot be sued directly. The action of the board in allowing claims for matters of county charge, and in ordering warrants to issue therefor, is final and conclusive on the county, in the absence of fraud, until it is reversed or vacated. Carroll *v.* Board, &c., 28 Miss. (6 Cush.) 38 (1854). But the weight of authority is otherwise. Shirk *v.* Pulaski County, 4 Dillon, 209 (1877). *Effect of issuing new orders for old.* See Clark *v.* Des Moines, 19 Iowa, 199; Chemung Canal Bank *v.* Chemung Co. Sup., 5 Denio (N. Y.), 517; Lake *v.* Trustees, 4 Denio (N. Y.), 520; Shirk *v.* Pulaski County, 4 Dillon, 209 (1877). On warrants or orders the *statute of limitations* does not begin to run until payment is denied. Justices of Bibb Co. Inferior Court *v.* Orr, 12 Ga. 137 (1852). See Carroll *v.* Tishamingo County Board of Police, 28 Miss. 38; De Cordova *v.* Galveston (bonds), 4 Tex. 470; Kenosha *v.* Lamson (coupons), 9 Wall. 478; *supra*, sec. 487, note; Baker *v.* Johnson County, 33 Iowa, 151. In *Nebraska*, county warrants are not within the limitation statutes. Brewer *v.* Otoe County, 1 Neb. 373.

[2] Colburn *v.* Chattanooga, Tenn.; s. c. 17 Am. Law Reg. N. S. 191; *post*, secs. 914, 921, 923.

[3] Tippecanoe Co. Comm'rs *v.* Cox, 6 Ind. 403; Campbell *v.* Polk County, 49 Mo. 214 (1872); Boro *v.* Phillips County, 4 Dillon, 216, 223 (1877), citing text; *post*, chap. xx.

[4] Lake *v.* Williamsburgh, 4 Denio, 520 (1847), remedy of holder discussed; distinguished from Kelly *v.* Mayor, &c. of Brooklyn, 4 Hill (N. Y.), 263; and see McCullough *v.* Brooklyn, 23 Wend. (N. Y.) 458; Cuyler *v.* Rochester, 12 Wend. (N. Y.) 165; Argenti *v.* San Francisco, 16 Cal. 255, and note remarks of *Field*, C. J.; Martin *v.* San Francisco, *Ib.* 285; Kingsberry *v.* Pettis Co., 48 Mo. 207 (1871). An instrument in this form:

DECEMBER, 31, 1836.

City of Brooklyn, ss. To the City Treasurer. Pay A. L. or order $1500 for award No. 7, and charge to Bedford road assessment, &c.

J. T., *Mayor.*
A. G. S., *Clerk.*

Held, 1st. Negotiable, and not payable out of any special fund. 2d. The corporation was not discharged by failure to present and give notice, no damage or injury being sustained in consequence of the omission. Kelley *v.* Brooklyn, 4 Hill (N. Y.), 263 (1843); Steel *v.* Davis County, 2 G. Greene (Iowa), 469; Campbell *v.* Polk County, 3 Iowa, 467.

[5] Clark *v.* Des Moines, 19 Iowa, 199, 222; Edwards on Bills, 143; Pease *v.*

§ 506 (414). **Interest on Corporate Indebtedness.** — The rule in respect to *interest on debts* against municipal corporations does not ordinarily differ from that which *applies to individuals*.[1] Under the Missouri statute, providing generally that creditors shall be allowed interest at the rate of six per cent per annum, &c., it is held that county warrants draw interest after presentment to the treasury and refusal of payment by the treasurer, the court regarding the general statute as to interest broad enough to embrace all debtors, counties as well as individuals.[2] But in Illinois it is held that the debts of municipal corporations are payable at the treasury of the body; that interest on coupons — that is, interest on interest — cannot be recovered, unless there be a special agreement to that effect, since such corporations are not named in the act regulating interest. The court remarks: "Whatever power these corporations may possess to contract for the payment of interest, in the absence of any express legislation on the subject, we are of opinion that their indebtedness, in the absence of such agreement, does not bear interest.[3] If such instruments (coupons) could in any event draw interest without an express agreement, it could only be after a proper demand of payment. Until a demand is made, such a body is not in default. They are not like individuals, bound to seek their creditors to make payments of their indebtedness."[4] The general and sound

Cornish, 19 Me. 191; Campbell *v.* Polk Co., 3 Iowa, 467; Union Co. Comm'rs *v.* Mason, 9 Ind. 97; Bayerque *v.* San Francisco, 1 McAll. C. C. R. 175; Bull *v.* Sims, 23 N. Y. 570; Montague *v.* Horan, 12 Wis. 599. In an action on a county order payable out of the three per cent fund, "as fast as the same shall accrue to the county," it *must be alleged* that the county has received money from the specific fund named applicable to the order in suit, or that the order was fraudulently drawn upon a fund in which the county had no assets. Union Co. Comm'rs *v.* Mason, 9 Ind. 97 (1857). See chapter on Mandamus, *post*.

[1] Langdon *v.* Castleton, 30 Vt. 285 (action on book account).

[2] Robbins *v.* County Court, 3 Mo. 57 (1831); State *v.* Pacific, 61 Mo. 155 (1875). In *Iowa*, coupons on county and city bonds are held to *draw interest*. Rogers *v.* Lee County, 1 Dillon C. C. R. 529. See Evansville, &c. R. Co. *v.* Evansville, 15 Ind. 395; Hollingsworth *v.* Detroit, 3 McLean, 472; Pruyn *v.* Milwaukee, 18 Wis. 367. If under authority to issue bonds with eight per cent interest, bonds be issued drawing twelve per cent, they are valid and bear interest at the statutory rate. Quincy *v.* Warfield, 25 Ill. 317. *Usury.* That usury can be predicated of a sale or issue by a corporation of its securities, see Danville *v.* Sutherlin, 20 Gratt. (Va.) 555 (1871); Lynchburg *v.* Norvell, 20 Gratt. (Va.) 601 (1871); Clark *v.* Des Moines, 19 Iowa, 199. May be made *payable outside the State*. Meyer *v.* Muscatine, 1 Wall. 384; Maddox *v.* Graham, 2 Met. (Ky.) 56.

[3] South Park Commissioners *v.* Dunlevy, 91 Ill. 49; Pekin *v.* Reynolds, 31 Ill. 529; People *v.* Salomon, 51 Ill. 52; Chicago *v.* People, 56 Ill. 327 (1870); Chicago *v.* Allcock, 86 Ill. 384; Cook *v.* South Park Commissioners, 61 Ill. 115.

[4] Pekin *v.* Reynolds, 31 Ill. 529 (1863); S. P. Chicago *v.* People, 56 Ill. 327 (1870); People *v.* Tazewell County, 22 Ill. 147; Johnson *v.* Stark County, 24 Ill. 75. But if made payable at a place other than the treasury, the bonds are not void, but