vating for a sewer, and there was also a direct misfeasance.

The cases in which cities and villages have been held subject to suits for neglect of public duty, in not keeping highways in repair, where none of the other elements have been taken into the account, are not numerous, and all which quote any authority professs to rest especially upon the New York cases, except where the remedy is statutory. It will be proper, therefore, to notice what those cases are, and upon what cases they are supported. The only cases of this kind decided in the courts of last resort, that we have been able to find, are *Hutson* v. *Mayor*, 9 N. Y. 163; *Hickox* v. *Plattsburg*, 16 N. Y. 161, and *Davenport* v. *Ruckman*, 37 N. Y. 568. This latter case resembles the one before us very closely in its leading features, and would furnish a very close precedent. It is not reasoned out at all, but refers for the doctrine to the other two cases, and to an authority in 18 N. Y., which does not relate to municipal liabilities. The case of *Hatson* v. *Mayor*, does not attempt to find any distinct foundation for the right of action, but refers to the cases in 3 Hill, and *Rochester White Lead Co.* v. *Rochester*, and *Adsit* v. *Brady*, 4 Hill, 630, as having established the liability. This latter case is disapproved in *Weet* v. *Brockport*, and the others are sustained there on the ground of misfeasance, and as Judge Denio, when the decisions in 16 New York were made, stated that he had not supposed there was any corporate liability for mere neglect to keep ways in repair, it is quite possible that the case of *Hatson* v. *Mayor*, was regarded as distinguishable. The circumstances were very aggravated, as it would seem that the city had left a road too narrow to accommodate a carriage without any paving and without protection against the danger of falling down a deep embankment into a railroad excavation. The report is not as full as could be desired upon the precise state of facts. In the Supreme Court, where the judges differed in opinion (two dissenting), the liability seems, from the view taken of that case by Judge Selden, to have rested on the ground that there had been a breach of private duty and not of duty to the public. If this was the view actually taken, it would not bring the case within the same category with the other road cases. But the case of *Weet* v. *Brockport*, 16 New York, 161, is recognized as the one in which the whole law has been finally settled, and it is upon the grounds there laid down, that the liability is now fixed in New York. The elaborate opinion of Judge Selden, which was adopted by the Court of Appeals, denies the correctness of the dicta in some of the previous cases, and asserts the liability to an action solely upon the ground that the franchises granted to municipal corporations are in law a sufficient consideration for an implied promise to perform with fidelity all the duties imposed by the charter, and that the liability is the same as that which attaches against individuals who have franchises in ferries, toll-bridges, and the like. The principle as he states it, is:

"That whenever an individual or a corporation, for a consideration received from the sovereign power, has become bound by covenant or agreement, either express or implied, to do certain things, such individual or corporation is liable, in case of neglect to perform such covenant, not only to a public prosecution by indictment, but to a private action at the suit of any person injured by such neglect. In all such cases the contract made with the sovereign power is deemed to enure to the benefit of every individual interested in its performance."

In order to get at the true ground of liability, the opinion goes on to determine, first, whether townships and other public bodies, not being incorporated cities or villages, are liable, and shows conclusively that they are not, and the court arrives at this conclusion not on the basis of an absence of duty or an absence of means, but because their duties are duties to the public and not to individuals. Full citations are made from the English cases which were cited before us, and also from the American cases. The case of *Young* v. *Commissioners of Roads*, 2 N. and McC., 537, is cited approvingly, and the following language is quoted as expressing the correct idea: "When an officer has been appointed to act, not for the public in general, but for individuals in particular, and from each individual receives an equivalent for the services rendered him, he may be responsible in a private action for a neglect of duty, but when the officer acts for the public in general, the appropriate remedy for his neglect of duty is a public prosecution." In another part of the opinion, sheriffs are given as examples of the former and highway commissioners of the latter class of officers The cases cited do not all require the consideration for the services to come from individuals, but they all require the services to be due to individuals and not to the public, and to spring from contract. The English cases are reviewed in the *Mersey Dock Cases*, 1 H. of L. Cases, N. S., 93; 1 H. & N. 493; 3 Id. 164, and exemplify this. Thus the liability to repair a sea wall is in favor of those who own the property adjacent; the liability to keep docks safe of access in favor of those who have occasion to require their use upon the customary terms; the liability to keep toll bridges safe in favor of those who use them. But there is no instance of liability where the public is interested directly, and in those cases where the obligation rests upon the consideration of corporate franchises, the duty has always been towards individuals, although the consideration moved from the state. The decisions upon this sustain the views of Judge Selden concerning his premises, but there is some difficulty in reaching his conclusions through them. It is admitted everywhere, except in a single case in Maryland, that there is no common law liabaility against ordinary municipal corporations, such as towns or counties, and that they cannot be sued except by statute. It has also been uniformly held in New York as well as elsewhere, that public officers whose offices are created by act of the legislature, are in no sense municipal agents, and that their neglect is not to be regarded as the neglect of the municipality, and their misconduct is not chargeable against it unless it is authorized or ratified expressly or by implication. This doctrine has been applied to cities as well as to all other corporations. *Barney* v. *Lowell*, 98 Mass. 570; *White* v. *Philipston*, 10 Metc., 108; *Mower* v. *Leicester*, 9 Mass., 247; *Bigelow* v. *Randolph*, 14 Gray, 541; *Wolcott* v. *Swanscott*,