

I am of opinion there can be no implication, under c. 169, to impose on the ratepayers any liability not expressly authorized by statute, and that the fact of two other items of expenditure for the library being expressly authorized while this is omitted, strengthens the argument that it was not intended, and the facts also shew that there was no intention on the part of the ratepayers nor the legislature to impose any liability on the town for the building.

I think the defendant's argument was sound when it was contended that in asking for plans and specifications and tenders the committee were doing so in the capacity of agents for Mr. Carnegie, and not for the town. Necessarily the committee and the town council had to be the active parties in arranging for the building, which Mr. Carnegie had promised to pay for, but they had no authority to bind the town in any way in respect to the construction of the building.

Dillon's Municipal Corporations, Vol. 2, s. 763, says:—

“It is a principle universally declared and admitted that municipal corporations can levy no taxes, general or special, upon the inhabitants or their property, unless the power be plainly and unmistakably conferred. It has indeed often been said that it must be specifically granted in terms, but all Courts agree that it must be given either in express words or by necessary or unmistakable implication, and that it cannot be collected by doubtful inferences from other powers, or powers relating to other subjects, nor can it be deduced from any considerations of convenience or advantage.”

It will be observed that the charges sued for in this action were included in the amount of plaintiff's tender, but whether so or not, makes no difference in the legal result. If power to make such a contract was not specifically conferred on the council, there would be no power to bind the ratepayers. The plaintiffs appear to have been well aware that payment for the building was to be got from the Carnegie fund, and must be taken to have made their tender accordingly, and to have known that only from that source could they receive payment. I agree that if the council had entered into the contract to put up the building in the only capacity it could have done so, acting for Mr. Carnegie, and plaintiff had constructed the building, payment could have been enforced against Mr. Carnegie, but that