1 Allen, 101; *Young* v. *Com'r of Roads*, 2 Nott. & McCord, 537; *Pack* v. *Mayor*, 4 Seld., 222; *Martin* v. *Mayor of Brooklyn*, 1 Hill, 545; *Bartlett* v. *Crozier*, 17 J. R., 438; *Morey* v. *Newfane*, 8 Barb., 605; *Eastman* v. *Meredith*, 36 N. Y. 284; *Hyde* v. *Jamaica*, 27 Vt. 443; *Lorillard* v. *Town of Monroe*, 11 N. Y. 392; *Mitchell* v. *Rockland*, 52 Maine, 168—and the numerous cases which exonerate cities from liabilities for not enforcing their police laws so as to prevent damage, rest upon a very similar basis.—*Howell* v. *Alexandria*, 3 Peters, 398; *Levy* v. *Mayor*, 1 Sandf, S. C. 465; *Proctor* v. *Lexington*, 13 B. Monroe, 509; *Howe* v. *New Orleans*, 12 La. Ann., 481; *Western Reserve College* v. *Cleveland*, 12 Ohio St., 375; *Brinkmeyer* v. *Evansville*, 29 Ind., 187; *Griffin* v. *Mayor*, 9 N. Y. 456. In *Eastman* v. *Meredith*, 36 N. H., 284, the distinction between the English and American municipal corporations is clearly defined. The former often hold special property and franchises of a profitable nature, which they have received upon conditions, and which they can hold by the same indefeasible right with individuals. But American municipalities hold their functions merely as governing agencies. They may own private property and transact business not strictly municipal, if allowed by law to do so, just as private parties may, and with the same liability; but their public functions are all held at sufferance, and their duties may be multiplied and enforced at the pleasure of the legislature. They have no choice in the matter; they have no privileges which cannot be taken away, and they derive no profit from their care of the public ways and the execution of their public functions. They differ from towns only in the extent of their powers and duties bestowed for public purposes, and their improvements are made by taxation, just as they are made on a smaller scale in towns and counties. In the case of *Bailey* v. *Mayor*, 3 Hill, 538, it was intimated by Judge Nelson that the state could not compel the city to accept its charter, and in *Child* v. *Boston*, the fact that the sewerage system had been left to vote and been accepted, was held to make it a private and not a public matter. The sewer cases have, in several instances, gone upon this latter notion. It is not necessary to discuss that question here, because streets are not private and because in this state at least, no municipality can exercise any powers except by state permission, and every municipal charter is liable to be amended at pleasure. The charter of Detroit has undergone most radical changes. It is impossible to sustain the proposition that those charters rest on contract, and it is impossible as Judge Selden demonstrates, to find any legal warrant for any other ground for distinguishing the liability of one municipal body from that of another. There is no basis or authority for any such distinction concerning the consideration on which their powers are granted, and it rests upon simple assertion; and yet the decision stands in New York as authority for all that is claimed here, because although in the case in which the opinion was given in the Supreme Court, it was not called for, yet in the case of *Hickox* v. *Trustees of Plattsburg*, 16 N. Y., 161, in which it was adopted as the opinion of the Court of Appeals, the mischief was a mere neglect to repair, when the street had been obstructed by an individual excavation for a short time.

It is impossible to harmonize the decision with the previous decisions exempting corporations from responsibility, because public officers were not their agents. It is no easier to sustain it in the face of the uniform decisions denying liability for failure to enforce their police regulations. The authorities which make corporations liable on the ground of conditions attached to their franchises, go very far towards compelling them to respond as absolutely bound to prevent mischief, and the general reasoning on which most of the opinions rest, and the criticisms made upon former decisions—which it is asserted, went altogether too far in creating liability—all are designed to show, and do show very forcibly, that simply as municipal corporations apart from any contract theory, no public bodies can be made responsible for official neglect, involving no active misfeasance.

There is no such distinction recognized in the law elsewhere. In *City of Providence* v. *Clapp*, 17 Howard, 161, the United States Supreme Court, through Judge Nelson, held that cities and towns were alike in their responsibility and in their immunity. In *County officers of Anne Arundel* v. *Duckett*, 20 Md., 468, a county was held responsible to the fullest extent. In New Jersey in *Freeholders of Sussex* v. *Strader*, 3 Harrison, 108; *County Freeholders of Essex*, 27 N. J., 415; *Livermore* v. *Freeholders of Camden*, 29 N. J., 245, and 2 Vroom, 507, *Pray* v. *Mayor of Jersey City*, 32 N. J., 394, the cases were all rested on the same principles, and cities were exonerated because towns and counties were. The suggestion of Judge Selden has been caught at by some courts since the decision, and has been carried to its legitimate results, as in *Jones* v. *New Haven*, 34 Conn., 1, where the damage was caused by a falling limb of a tree. But so far as we have seen, even the cases which are decided on this ground, do not hold that towns do not receive their powers upon a consideration as well as cities. That question still remains to be handled in those courts.

It is utterly impossible to draw any rational distinction on any such ground. It is competent for the legislature to give towns and counties powers as large as those granted to cities. Each receives what is supposed to be necessary or convenient, and each receives this, because the good government of the people is supposed to require it. It would be contrary to every principle of fairness, to give special privileges to any part of the people and then deny to others, and such is not the purpose of city charters. In England the burgesses of boroughs and cities have very important and valuable privileges of an exclusive nature and not common to all the people of the realm. Their charters are grants of privilege and not mere government agencies. Their free customs and liberties were put by the great charter under the same immunity with private freeholds. But in this state and in this country generally they are not placed beyond legislative control. The Dartmouth College case which first established charters as contracts, distinguished between public and private corporations, and there is no respectable authority to be found anywhere which holds that either offices or