ratification heal defect of authority, or a transgression of the very letter of its charter. This would be true if the contract in question were prohibited by statute, or immoral; but when, as here, there is, at the utmost, only a defect of power, and even though specific performance of the contract might not be enforced, the corporation may be held liable, even at law, on a contract of which it has had the benefit, when it has induced a party, relying on its promise, and in execution of the contract, to spend money and perform his part thereof. This distinction has been frequently recognized and applied. Hitchcock v. Galveston, 96 U. S. 351; State Board of Agriculture v. Citizens' St. Ry. Co., 47 Ind. 407; Allegheny City v. McClurkan, 14 Pa. St. 81; Railway Co. v. McCarthy, 96 U. S. 258-267; Parkersburg v. Brown, 106 U. S. 487, 503, 1 Sup. Ct. Rep. 442; Chapman v. Douglas Co., 107 U. S. 355, 2 Sup. Ct. Rep. 62; Bank v. Townsend, 139 U. S. 67, 71, 11 Sup. Ct. Rep. 496; East St. Louis v. St. Louis Gaslight, etc., Co., 98 Ill. 415. If a court of law may go to this extent in enforcing the claims of common honesty, can there be doubt that a court of equity may mold its decree to the same end under like conditions? It is conceded that, were the city an individual, its attempt to repudiate its solemn obligations, recognized by it for a period nearly equal to that prescribed by the statute of limitation for bringing real actions, would justly be held wanting in good faith, but it is said that this rule cannot be enforced against a municipality. Do courts of equity extend immunity to municipal dishonesty? I find no warrant for that doctrine. "The obligation to do justice rests upon all persons, natural or artificial; and, if a county obtains the money or property of others without authority, the law, independent of any statute, will compel restitution or compensation." Marsh v. Fulton Co., 10 Wall. 676; Louisiana v. Wood, 102 U. S. 299; Chapman v. Douglas Co., 107 U. S. 355, 2 Sup. Ct. Rep. 62; Bank v. Townsend, 139 U. S. 75, 11 Sup. Ct. Rep. 496; Clark v. Saline Co., 9 Neb. 516, 4 N. W. Rep. 246.

Or, as put in the vigorous language of Chief Justice Field, in Pimental v. San Francisco, 21 Cal. 362, "where the city, under a void ordinance, sold certain of its property, and retained the proceeds, and, when sued for the amounts, pleaded the invalidity of the ordinance, and sought to escape liability on the ground that the city was under no obligation to respond for the acts of its officers under that ordinance," the chief justice said:

"The city is not exempt from the common obligation to do justice which binds individuals. Such obligations rest upon all persons, whether natural or artificial. If the city obtained the money of another by mistake, or without authority of law, it is her duty to refund it, from this general obligation. If she obtained other property, which does not belong to her, it is her duty to restore it, or to render an equivalent therefor, from the like obligation. Argenti v. San Francisco, 16 Cal. 282. The legal liability springs from the moral duty to make restitution, and we do not appreciate the morality which denies, in such cases, any rights to the individual whose money or other property has been thus appropriated. The law countenances no such wretched ethics. Its end, always, is to do justice."

I am unable to perceive any distinction between the morality of retaining money dishonestly acquired, and that involved in denying

compensation for expenditures and investments made in good faith, on the express request and assurance of the individual or corporation, private or public, which has obtained, and still holds, the benefit of such outlays. Nor is it easy to see the honesty or equity of permitting the municipality to pocket the taxes which it has received under the very ordinance it seeks to repudiate, until the statute of limitations has run against their recovery by the defrauded party. But it is not true that the law casts upon a party dealing with a municipal corporation all the consequences of a misconstruction of its powers, and leaves him remediless. Where there has been a practical construction of its charter given by the authorities of a municipality and that construction, though of doubtful validity, has been acted upon by it, and rights have grown up under it, the court shall uphold it, in favor of one who has dealt in good faith. Van Hostrup v. Madison, 1 Wall. 297; Chicago v. Sheldon, 9 Wall. 54; Insurance Co. v. Hoge, 21 How. 35, 36; U. S. v. Union Pac. R. Co., 37 Fed. Rep. 551; U. S. v. Hill, 120 U. S. 169, 7 Sup. Ct. Rep. 510; Brown v. State, 5 Colo. 496; Port Huron v. McCall, 46 Mich. 565, 10 N. W. Rep. 23; Cameron v. Bank, 37 Mich. 240.

Upon the theory that the maintenance and operation of the railway in the streets is a public nuisance, the complainant's case is equally unsustainable. There is no averment or allegation which, under any system of pleading, or by the extremest stretch of liberality, can be tortured into a charge that the defendants' occupancy of the streets is either a public or a private nuisance, cognizable in equity, or that the right to the relief here asked is predicated on that theory. Whether or not a given use of a highway is a nuisance, is a question of fact, to be tried on apt allegations. "When the highway is not restricted in its dedication to some particular mode of use," says Judge Cooley, "it is open to all suitable methods; and it cannot be assumed that these will be the same from age to age, or that new means of making the way useful must be excluded merely because their introduction may tend to the inconvenience, or even injury, of those who continue to use the road after the same manner as formerly. A highway established for the general benefit of passage and traffic must admit of new methods of use whenever it is found that the general benefit requires them; and if the law should preclude the adaptation of the use to the new methods it would defeat, in a greater or less degree, the purposes for which highways are established." Macomber v. Nichols, 34 Mich. 216. Again he says, in Railroad v. Heisel, 38 Mich. 66: "A street railway for local purposes, so far from constituting a new burden, is supposed to be permitted, because it constitutes a relief to the street. It is in furtherance of the purpose for which the street is established, and relieves the pressure of local travel, instead of constituting an embarrassment." And Judge Grant, on the same subject, says that "the street railways have become, not only a convenience, but a necessity, to the people." Railway v. Mills, 85 Mich. 648, 48 N. W. Rep. 1007. They cannot, therefore, be, per

se, a nuisance. See, also, Attorney General v. Metropolitan R. R., 125 Mass. 516–518. Indeed, the bill practically admits this, in its lack of averment, and notably in concession that the object sought by the bill is purely the resale of the license to some other corporation, which will pay a larger sum for the privilege now exercised by the defendant. But while admitted that the use of the streets sought to be enjoined is consistent with the public easement of travel, the conclusion is reached that the extension of the easement by the common council being void, as wholly ultra vires the city, the defendant's occupancy of the streets with its tracks, and in the operation of its railway, being therefore unauthorized by law, it is the province and duty of a court of equity to enjoin such use. The only authority cited for this conclusion is Denver v. Denver City Ry. Co., 2 Colo. 673. The case cites Davis v. Mayor, 14 N. Y. 525, which, in its turn, cites several authorities holding that the unauthorized obstruction of the public highway is a nuisance,—a proposition which, in the abstract, no one will question. Nor is it denied that, in a proper case, equity will enjoin the continuance of such an obstruction. But in this state it is held that a public nuisance must be something that subjects the public to inconvenience or annoyance. The mere use of the street does not make out the offense. People v. Carpenter, 1 Mich. 273; Clark v. Ice Co., 24 Mich. 508; Attorney General v. Evart Booming Co., 34 Mich. 462; Everett v. City of Marquette, 53 Mich. 450–452, 19 N. W. Rep. 140.

In the latter case the common council had granted complainant a license to construct a railway from the sidewalk down to the basement of his store. Ten years afterwards the council directed the stairway to be removed, and the opening in the sidewalk closed. It was contended on the part of the city that the common council had no power to give permission for the permanent appropriation of any one of the public streets for private purposes. Referring to the permission granted by the first council, Judge Cooley said:

"If the permission was effectual for no other purpose, it at least rebutted any presumption, which might otherwise have existed, that this practical appropriation of the street was, per se, a nuisance. If the permission was a mere license, and the subsequent action of the city council is to be regarded as a revocation of the license, it does not follow that the plaintiff had, by the revocation, immediately been converted into a wrongdoer."

The decree of the court below awarded a perpetual injunction against the city, which the supreme court affirmed. It seems to me impossible to reconcile this case with the conclusion of the circuit judge that the revocation of the ordinance of 1879 by that of March 29, 1892, operated to convert the defendants into wrongdoers, and make them amenable to injunction. To warrant the interposition of a court of equity against unauthorized acts, even at the instance of the state, there must be a tangible grievance,—a substantial invasion of the public right. Attorney General v. Metropolitan R. Co., 125 Mass. 516; Brick Co. v. Foster, 115 Mass. 432–438; Attorney General v. Sheffield Gas Consumers' Co., 3 De Gex, M. & G. 304–320, on appeal 4 Ch. App. 71. It may be said, in