

To enable it to pay interest on its public debt and for other purposes twelve or thirteen millions more is required; so that at this time the annual operations of the city government require to be raised by taxation between thirty-three and thirty-four millions of dollars, necessitating a tax rate of somewhat over two per cent on the assessed values of taxable property. The official statement of the retiring mayor, Honorable Abram S. Hewitt, made the 31st of December, 1888, at the end of his term of two years, shows the condition of the city government to be much better than is commonly supposed. He says: "Every department of the city government is in admirable working order. No private business is better organized or more closely attended to than the public service in this city. Every outstanding claim that could be collected has been; all disputes have been adjusted; the public property has been carefully conserved

and made productive, and there are no claims against the city of any considerable magnitude. The credit of the city, as indicated by the prices bid for its bonds, has never been so high as at the present time. Its securities command a higher price than those of any other city in the world. At the outset of my term of office I adopted the principle of calling together the heads of departments to consult as to legislation which might be required for the advantage of the city and the better conduct of its business. Every act proposed was carefully considered by this conference. One hundred and ninety-one bills directly affecting the city of New York were passed by the legislature during the last year. The passage of many objectionable bills was thus defeated, but in some important cases the legislature acted directly against the recommendations of the city authorities."

CHAPTER II.

CORPORATIONS DEFINED AND CLASSIFIED. — PRIVATE, PUBLIC, AND MUNICIPAL CORPORATIONS DISTINGUISHED. — THE NEW ENGLAND TOWN.

§ 18 (9a). **Corporation defined.** — A corporation is a legal institution, devised to confer upon the individuals of which it is composed powers, privileges, and immunities which they would not otherwise possess, the most important of which are continuous legal identity or unity, and perpetual or indefinite succession under the corporate name, notwithstanding successive changes, by death or otherwise, in the corporators or members. It conveys, perhaps, as intelligible an idea as can be given by a brief definition to say that a corporation is a *legal person*, perfectly distinct from the members which compose it, having a special name, and having such powers, and such only, as the law prescribes. The most accurate notions of complex subjects come not from definition, but description; and in the course of the present work we shall describe the class of corporations with which it deals, by their creation, constitution, faculties, powers, objects, duties, and liabilities. Some of the definitions and deductions in the earlier reports amuse by their quaintness, but are without much practical value. "As touching corporations," says Lord Coke, "the opinion of Manwood, chief baron, was this: that they were invisible, immortal, having no conscience or soul; and therefore, no subpœna lieth against them; they cannot speak, nor appear in person, but by attorney."¹

Chief-Justice Marshall's *description of a corporation* is remarkable for its general accuracy and felicitous expression: "A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of the law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed to be best calculated to effect the object for which it is created. Among the most important are *immortality* [in the legal sense that it may be made *capable* of indefinite duration], and, if the expression may be allowed, *individuality*, — properties by which a perpetual succession of many persons are considered

¹ 2 Bulst. 233; Willc. Corp. 15. *Ante*, sec. 3.

as the same, and may act as a single, individual. They enable a corporation to manage its own affairs, and to hold property without the perplexing intricacy, the hazardous and endless necessity, of perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men, in succession, with these qualities and capacities that corporations were invented and are in use. By these means a perpetual succession of individuals are capable of acting for the promotion of the particular object like one immortal being.¹ Thus, though the members change, the corporation itself remains in its legal personality and unity the same, all of its members, past and present, constituting in law but one person, in the same manner as the Thames or the Mississippi is still the same river, though the parts composing it are constantly changing.² The above observations are, in general, applicable to all corporations, private as well as public and municipal.

§ 19 (9b). **Municipal Corporations defined.** — A *municipal corporation*, in its strict and proper sense, is the body politic and corporate constituted by the incorporation of the inhabitants of a city or town for the purposes of local government thereof. Municipal corporations as they exist in this country are bodies politic and corporate of the general character above described, established by law partly as an agency of the State to assist in the civil government of the country, but chiefly to regulate and administer the local or internal affairs of the city, town, or district which is incorporated.³

¹ Dartmouth College v. Woodward, 4 Wheat. 636, 1819. Other definitions: 4 Black. Com. 37; 1 Kyd, Corp. 13; Grant, Corp. 3, 4; Angell & Amès, Corp. sec. 1; Glover, Corp. 3, 6. Willcock declines to define, but describes corporations. Munic. Corp. 15. The last-named author observes that "a corporation continues the same body politic from its creation to its dissolution, unaltered by the revolution of ages or the successive changes of its members, so that it is unnecessary to make grants to them and their successors, or to declare their obligations binding on their successors." *Ib.* 16; Glover, 8; Grant, 5; 7 Vin. Abr. 358, 363. *Ante*, sec. 3.

² Glover, 8; 1 Black. Com. 468. It is scarcely ever quite safe to express or even to illustrate a legal proposition in figura-

tive language, but the simile of the elegant English commentator is not only striking, but accurate. "All of the individual members," present and future, "are but one person in law, — a person that never dies, in like manner as the river Thames is still the same river, though the parts which compose it are changing every instant." 1 Black. Com. 468.

³ "A body politic," says Lord Coke, "is a body to take in succession, framed as to its capacity by policy, and therefore is called by Littleton (sec. 413) a *body politic*; it is called a *corporation*, or *body corporate*, because the persons are made into a body, and are of capacity to take, grant, &c., by a particular name." Vinet, Abr. Corp. (a 2). A *municipal corporation* is also defined to be "An investing the people of a place with the local govern-

§ 20. **Same subject.** — *We may, therefore, define a municipal corporation* in its historical and strict sense to be the incorporation, by the authority of the government, of the inhabitants of a particular place or district, and authorizing them in their corporate capacity to exercise subordinate specified powers of legislation and regulation with respect to their local and internal concerns. This power of local government is the distinctive purpose and the distinguishing feature of a municipal corporation proper.¹ The phrase "municipal corporation" is used with us in general in the strict and proper sense just mentioned; but sometimes it is used in a broader sense that includes also public or *quasi* corporations, the principal purpose of whose creation is as an instrumentality of the State, and not for the regulation of the local and special affairs of a compact community.²

ment thereof." Salk. 183. "This latter description," says Mr. Justice Nelson, in the *People v. Morris*, 13 Wend. 325, 334 (1835) "is the most appropriate, and is justified by the history of these institutions, and the nature of the powers with which they were, and are, invested." It is also quoted by Campbell, C. J., in the *People v. Hurlburt*, 24 Mich. 44 (1871). *Post*, sec. 183. The *English Municipal Corporations Act* 1882 applies to certain described incorporated towns, cities, and places; and it clearly defines the words "municipal corporations" as used in the Act, thus: "Municipal corporation means the body corporate constituted by the incorporation of the inhabitants of a borough" (sec. 7). "The municipal corporation acts by its council, which shall exercise all the powers vested in the corporation. The council consists of the mayor, aldermen, and councillors." (sec. 10.)

¹ 2 Bouv. Law Dict. 21; 2 Kent, 275; *People v. Morris*, *supra*. *Ante*, secs. 9, 12, 14, 17, 19; *post*, secs. 21, 22, 23, 46, 58.

² *Heller v. Stremmel*, 52 Mo. 309 (1873); *State v. Leffingwell*, 54 Mo. 458, 471, (1873). This last case discusses the meaning of the terms "municipal corporations" and "corporations for municipal purposes," as used in the Constitution of the State. *Post*, sec. 49. "The definition of a municipal corporation," says the Supreme Court of *Missouri*, "would only include organized cities and towns and other like organizations with political and

legislative powers for the local civil government and police regulation of the inhabitants of particular districts included in the boundaries of the corporation;" and it was accordingly held that an *incorporated board of public schools* was not a *municipal corporation* within the meaning of an Act declaring that no person shall be eligible to a certain office who shall hold any office under a municipal corporation. *Heller v. Stremmel*, *supra*. In *Wisconsin* the term "municipal corporation," as used in the Constitution of the State, does not include towns (*Norton v. Peck*, 3 Wis. 714); and when used in *Statutes* it is presumed to be used in the sense in which the term is used in the Constitution, unless a different legislative intention appears; and under the legislation of that State municipal corporations, properly and strictly so called, do not include towns not chartered, school districts, or other *quasi* corporations. *Easton v. Manitowoc Co.* (power to purchase and hold tax certificates), 44 Wis. 489 (1878). *Post*, sec. 48, note. "The word 'municipal,' as originally used in its strictness, applied to cities only. The word now has (in the legislation of *Iowa*) a much more extended meaning, and when applied to corporations, the words 'political,' 'municipal,' and 'public' are used interchangeably." *Rothrock, J.*, in *Curry v. District Township of Sioux City*, 62 Iowa, 102, construing a special act. *Post*, sec. 22, *n.* In the legislation of *Illinois*

§ 21. **Creation and Powers.**—Like other corporations, municipal corporations must with us *be created by statute*. They possess no powers or faculties not conferred upon them, either expressly or by fair implication, by the law which creates them or by other statutes applicable to them. Persons residing in or inhabiting a place to be incorporated, as well as the place itself, are—both *the persons and the place*—indispensable to the constitution of a municipal corporation.¹ *Artificial succession* also is of the essence of such a corporation. Municipal corporations are created and exist for the public advantage, and not for the benefit of their officers or of particular individuals or classes. *The corporation is the artificial body created by the law*, and not the officers, since these are, from the lowest up to the councilmen or mayor, the mere ministers of the corporation. Even the council, or other legislative or governing body, constitutes, as it has been well remarked, neither *the corporation*, nor in themselves *a corporation*.² It is quite impossible in any brief space to convey an adequate idea of the exact nature and properties of an American municipal corporation. There is nothing in the law more complex and abstruse. Although the inhabitants of a place be incorporated, they do not constitute the corporation; neither, as we have just observed, is it constituted by the governing body. Notwithstanding Mr. Kyd's criticism, the corporation is *invisible*, for, although we may see all the inhabitants, or all of the officers, we do not see the legal body—ideal person,—which makes the corporation, as we see an army; but this is a property common to all corporations.³ An additional complexity in municipal corporations arises out of the various and diverse powers usually conferred, giving them, as they exist among us, an extremely composite character. The primary and fundamental idea of a municipal corporation is an institution to regulate and administer the internal concerns of the inhabitants of a defined locality in matters peculiar to the place incorporated, or at all events not common to the state or people at large; but it is the constant practice of the States in this country to make use of the incorporated instrumentality, or of its officers, to exercise powers, perform duties, and execute functions

an incorporated "town" and an incorporated "village" are one and the same thing. *Enfield v. Jordan*, 119 U. S. 680; *Martin v. People*, 87 Ill. 524. Mr. Justice Bradley, in *Enfield v. Martin*, *supra*, at page 685, considers the meaning of the words "town" and "village" as used in New England, New York, the Southern, the Middle, and the Western States.

¹ *Galesburg v. Hawkinson*, 75 Ill. 156 (1874). *Post*, sec. 183.

² *Reg. v. Paramore*, 10 Ad. & El. 286; *Reg. v. York*, 2 Q. B. 850; *Grant*, 357; *Glover*, 4; *Harrison v. Williams*, 3 Barn. & Cress. 162; *Brown v. Gates*, 15 W. Va. (citing text) 131. *Post*, sec. 40.

³ *Ante*, sec. 3.

that are not strictly or properly local or municipal in their nature, but which are, in fact, state powers, exercised by local officers, within defined territorial limits; and it is important, as we shall hereafter see, to keep this distinction in mind. In theory, the two classes of powers are distinct; but the line which separates the one from the other is often difficult to trace. The point may be illustrated from the English law: If the king incorporate a town, its officers will have no implied power as conservators or justices of the peace,—express words are necessary to confer this power; and when they act in the latter capacity, it is not because they are corporate officers, but because of powers expressly annexed to their corporate offices; and the two capacities remain distinct, although united in the same person.¹ The subject itself will be elsewhere discussed. The *name* of the municipal corporation, its *boundaries*, its *officers*, its *powers*, its *duties*, and the like, are subjects regulated by legislative enactment, and will be hereafter noticed.

§ 22 (10). **Public and Municipal Corporations distinguished.**—Corporations intended to assist in the conduct of local civil government are sometimes styled *political*, sometimes *public*, sometimes *civil*, and sometimes *municipal*, and certain kinds of them with very restricted powers, *quasi* corporations,—all these by way of distinction from *private* corporations. All corporations intended as agencies in the administration of civil government are *public*, as distinguished from *private* corporations. Thus an incorporated school-district, or county, as well as city, is a public corporation; but the school-district or county, properly speaking, is not, while the city is a *municipal* corporation.² All municipal corporations are public bodies, created for civil or political purposes; but all civil, political, or

¹ 1 Kyd, 327; *People v. Hurlburt*, 24 Mich. 44 (1871), *per Campbell*, C. J.; s. c. 6 Am. Law Rev. 376; s. c. 9 Am. Rep. 103; s. p. *People v. Detroit*, 23 Mich. 228 (1873); s. c. 15 Am. Rep. 202 (*post*, secs. 72, 73), in which the nature of municipal corporations and the purposes of their creation are fully discussed by *Cooley*, J. The text quoted and the distinction approved, and made the basis of the decision, in *Beach v. Leahy*, 11 Kansas, 23, 30 (1873).

² *Ante*, secs. 9, 12, 14, 17, 19, 20, and note. *White v. Commissioners*, 90 N. C. 437; *Schultes v. Eberly*, 82 Ala. 242. In *Arkansas*, *school-districts* are by statute *quasi* corporations, with power to sue and

be sued, but not liable for trespasses committed by their officers. *School District v. Williams*, 38 Ark. 454. In *Iowa* a *school district* is a municipal corporation within the meaning of the act authorizing the issue of bonds by such corporations. *Curry v. District Township of Sioux City*, 63 Iowa, 102. In *Louisiana* the *police juries* of the several parishes are municipal corporations. *Police Jury of Ouachita v. Monroe*, 38 La. An. 630. "Municipal corporations," as used in the amendment to the Constitution of *Minnesota* relating to the assessment of property for local improvements, held to include *counties*. *Dowlan v. County of Sibley*, 36 Minn. 430. *Supra*, sec. 20, and note.

public corporations are not, in the proper use of language, municipal corporations. The phrase "municipal corporations," in the contemplation of this treatise, has reference to *incorporated villages, towns, and cities*, with power of local administration, as distinguished from other public corporations, such as counties and *quasi* corporations.¹

§ 23. *Same subject.* — The *distinction between municipal corporations proper*, such as chartered towns and cities, or towns and cities voluntarily organized under general incorporating acts, such as exist in a number of the States, and *involuntary quasi corporations*, such as counties, has been very clearly drawn by the Supreme Court of Ohio: "*Municipal corporations proper* are called into existence either at the direct solicitation or by the free consent of the persons composing them, for the promotion of their own local and private advantage and convenience." On the other hand, "*Counties* are at most but local organizations, which, for the purposes of civil administration, are invested with a few functions characteristic of a corporate existence. They are local subdivisions of the State, created by the sovereign power of the State, of its own sovereign will, without the particular solicitation, consent, or concurrent action of the people who inhabit them. The former (municipal) organization is asked for, or at least assented to, by the people it embraces; the latter organization (counties) is superimposed by a sovereign and paramount authority."² "A *municipal corporation proper* is created mainly for the interest, advantage, and convenience of the locality and its people;³ a *county organization* is created almost exclusively with a view to the policy of the State at large, for purposes of political organization and civil administration, in matters of finance, of education, of provision for the poor, of military organization, of the means of travel and transport, and especially for the general ad-

¹ Hamilton Co. v. Mighels, 7 Ohio St. 109 (1857); Finch v. Board, &c., 30 Ohio St. 37; Askew v. Hale, 54 Ala. 639, — approving text; Greene County v. Eubanks, 80 Ala. 204; Lawrence County v. Chatteroi R. R. Co., 81 Ky. 225; Manuel v. Commissioners, 98 N. C. 9; Cathcart v. Comstock, 56 Wis. 590.

² Hamilton Co. v. Mighels, *supra*. A *county* is one of the public territorial divisions of a State, created and organized for public political purposes connected with the administration of the State government, and specially charged with the superintendence and administration of the

local affairs of the community; and, being in its nature and objects a municipal organization, the legislature may, unless restrained by the Constitution, or some one of those fundamental maxims of right and justice with respect to which all governments and society are supposed to be organized, exercise control over the county agencies, and require such public duties and functions to be performed by them as fall within the general scope and objects of the municipal organization. Talbot v. Queen Anne's County, 50 Md. 245. *Post*, chaps. iv., xxiii.

³ *Post*, sec. 183. *Ante*, secs. 19–22.

ministration of justice. With scarcely an exception, all the powers and functions of the county organization have a direct and exclusive reference to the general policy of the State, and are, in fact, but a branch of the general administration of that policy."¹

§ 24. *Same subject.* — An incorporated city or town sometimes embraces by legislative provision *two distinct corporations*, as for example, the municipal and the school corporation existing within the same territory. It is in such cases a distinct corporation for school purposes, and under the statute or charter may be bound as such for the contract price of materials furnished and labor performed by another in the erection of a school building for such corporation.² More generally, however, *school-districts* are organized under the general laws of the State, and fall within the class of corporations known as *quasi* corporations.³

¹ Hamilton Co. v. Mighels, 7 Ohio St. 109. In this case, from which we have quoted, the learned judge, adverting to the case in hand, in which it was sought to make the county liable in damages to one who suffered a personal injury from the neglect of the commissioners of the county in the discharge of their official duties, says: "But, it is said, the members of the board of county commissioners are chosen by the electors of the county, and hence the board is to be regarded as the *agents of the county*, for whose torts in the performance of official duties the county ought to be responsible. True, the people of the county elect the board of county commissioners; but they also elect the sheriff and treasurer of the county. Are the people of the county, therefore, responsible for the malfeasances in office of the sheriff or for the official defalcations of the county treasurer? This will not be pretended. . . . We cannot but think that county commissioners are not agents or representatives of the county in any such sense or manner as to render the people of the county justly answerable for their neglect; even if the neglect be such as would create a civil liability against a natural person or a municipal or private corporation. It is," he adds, "undoubtedly competent for the legislature to make the people of a county liable for the official delinquencies of the county commissioners; but this has not yet been done, and

we think such liability cannot be derived from the relations of the parties, either on the principles or the precedents of the common law." Followed, Jacobs v. Hamilton Co., 4 Fisher Pat. Cases, 81 (1862). Also cited and followed in Wehn v. Gage Co., 5 Neb. 494 (1877), where it was held that, in the absence of a statute creating the liability, the county was not liable to an action by reason of its jail being so erected and kept as to become an actual nuisance to persons residing near it. Sec. 22, cited and approved. Pulaski County v. Reeve, 42 Ark. 55; State v. Leffingwell, 54 Mo. 458 (1873); Askew v. Hale Co., 54 Ala. 639 (1875); s. c. 25 Am. Rep. 730. See also Soper v. Henry Co., 26 Iowa, 264 (1868); Treadwell v. Commissioners, 11 Ohio St. 190; Angell & Ames, secs. 14, 23, 24, 25. *Post*, secs. 57, 66, also chapter on Actions, secs. 963, 965, 966, 1014.

² Princeton v. Gebhart, 61 Ind. 187; Inglis v. Hughes, 61 Ind. 212; Wright v. Stockman, 59 Ind. 65; Sheffield v. Address, 56 Ind. 157.

³ Harris v. School District, 8 Foster, 28 (N. H.) 58, 61 (1853). Speaking of the powers of separate school-districts not included in a municipality, and of their officers, Bell, J., in the case just cited, observes: "These little corporations have sprung into existence within a few years, and their corporate powers and those of their officers are to be settled by the constructions of the courts upon a succession of crude, unconnected, and often experi-

§ 25 (10 a). **Same subject. Distinction between Public and quasi and Municipal Corporations.**— Civil corporations are of different *grades or classes*, but in essence and nature they must all be regarded as public. The *school-district or the road-district* is usually invested by general enactments operating throughout the State with a corporate character, the better to perform within and for the locality its special function, which is indicated by its name. It is but an instrumentality of the State, and the State incorporates it that it may the more effectually discharge its appointed duty. So with *counties*. They are involuntary political or civil divisions of the State, created by general laws to aid in the administration of government. Their powers are not uniform in all the States, but these generally relate to the administration of justice, the support of the poor, the establishment and repair of highways, — all of which are matters of *State*, as distinguished from municipal concern. They are purely auxiliaries of the State; and to the general statutes of the State they owe their creation, and the statutes confer upon them all the powers they possess, prescribe all the duties they owe, and impose all liabilities to which they are subject.¹ Considered with respect to the limited number of their corporate powers, the bodies above named rank low down in the scale or grade of corporate existence; and hence have been frequently termed *quasi corporations*.² This designation distinguishes them on the one hand

mental enactments. School-districts are in New Hampshire *quasi corporations* of the most limited powers known to the laws. They have no powers derived from usage. They have the powers expressly granted to them, and such implied powers as are necessary to enable them to perform their duties, and no more. Among them is the power to vote money for specified purposes, and the power to appoint committees 'to carry their votes' relative to those purposes 'into effect.' The district may clearly, by their votes for building and repairing school-houses, limit the expense to a definite sum; and they may limit the precise repairs or the exact description of the school-house to be built, and when this is done the *committee* (appointed to 'carry the votes into effect') cannot bind the district by exceeding those limits. These committees are special agents, without any general powers over the affairs of the district, and their powers are confined to a special purpose; and no inference can be drawn from the general nature of their

powers. The liability of such powers to abuse furnishes the strongest arguments against their existence," as a committee might load the district with debts, though the district had expressly limited their authority. See also *Wilson v. School Dist.*, 32 (N. H.) 118 (1855); *Foster v. Lane*, 10 *Foster*, 30 (N. H.) 305, 315; *Giles v. School Dist.*, 11 *Fost.* 31 (N. H.) 304; *Scales v. Chattahoochee County*, 41 *Ga.* 225 (1870); *Rogers v. People*, 68 *Ill.* 154 (1873), citing text. So also *Beach v. Leahy*, 11 *Kansas*, 23, 30 (1873). A school-district is bound by the contract of its board for repairs of its school-house, notwithstanding that a given sum had been voted for such repairs and expended for such object. *Conklin v. School Dist.* 22 *Kansas*, 521. And under a parol contract. Cases in note 2, *supra*.

¹ *Ante*, secs. 9, 12, 14, 17, 19-23. *Post*, secs. 46, 963-966, 1014.

² *Hamilton County v. Garrett*, 62 *Tex.* 602.

from private corporations aggregate, and on the other from municipal corporations proper, such as cities or towns acting under charters, or incorporating statutes, and which are invested with more powers and endowed with special functions relating to the particular or local interests of the municipality, and to this end are granted a larger measure of corporate life.

§ 26. **Same subject.**—It will appear hereafter that nearly all of the courts have drawn a marked line of *distinction between municipal corporations and quasi corporations, in respect to their liability to persons injured by their neglect of duty*; holding the former liable, without an express statute giving the action, in cases in which the latter are not considered liable unless made so by express legislative enactment. One reason given for the distinction is, that with respect to local or municipal powers proper (as distinguished from those conferred upon the municipality as a mere agent of the State) the inhabitants are to be regarded as having been clothed with them at their request and for their peculiar and special advantage, and that as to such powers and the duties springing out of them, the corporation has a *private* character, and is liable, on the like principles and generally to the same extent as a private corporation. This subject will be fully examined in its appropriate place, and is alluded to here only for the purpose of noting the distinction which has been made between municipal and public corporations.¹ But that a municipal corporation is in any just view a *private* corporation, or possesses a double character, the one private and the other public, although often asserted, is only true in a modified sense. In their nature and purposes, municipal corporations, however numerous and complex their powers and functions, are essentially public.²

§ 27. **Same subject.** Concerning the *distinction mentioned in the preceding section*, the following views may, perhaps, on principle be

¹ *Post*, ch. xxiii. Text approved. *Hannon v. St. Louis County*, 62 *Mo.* 313, 316 (1876); *Heller v. Stremmel*, 52 *Mo.* 309 (1873); *State v. Leffingwell*, 54 *Mo.* 458, 471 (1873); *Union Township v. Gibboney*, 94 *Pa. St.* 534.

² The doctrine of the *private character* of municipal corporations, as respects their property rights, is argued with great force by *Cooley, J.*, in *People v. Detroit*, 28 *Mich.* 228; s. c. 15 *Am. Rep.* 202. See *post*, ch. iv, secs. 58, 72, 73. In the *Roman law*, see *ante*, sec. 3. The author allows

the last two sentences of the text, as they appeared in the third edition, to stand. But to prevent misconception he now adds that while, in his judgment, a municipal corporation is essentially a *public* and not in any true sense a *private* corporation, still it does not follow that it may not have, under the Constitutions of the States, certain primordial and fundamental rights, which, although they are not beyond legislative regulation, are nevertheless beyond legislative destruction. See *post*, ch. iv.