CHAPTER III.

CREATION, AND SEVERAL KINDS OF MUNICIPAL CORPORATIONS IN ENGLAND AND IN THE UNITED STATES.

In England. — Difference between Regal and Parliamentary Corporations. — Municipal Corporations Act of 1835.

§ 32 (15). **Creation and kinds in England; Charter defined.** — In England, corporations can be *created* only in one of two ways: 1, by the king's charter: 2, by act of parliament. They *exist* there, however, — 1, by the common law; 2, by prescription; 3, by royal charter; 4, by authority of parliament. Corporations at *common law* are those which derive their existence and powers from immemorial usage, although they may have had their origin in an act of parliament or royal grant, no longer discoverable. Those by *prescription* presuppose a grant by charter or act of parliament, which has been lost. Into corporations created by regal or legislative grant may be resolved what have been styled corporations by *implication*, which is, where a body, lawfully constituted, cannot carry into effect its purposes without attributing to it a corporate character. The franchise of being a corporation, and the right to exercise corporate powers and to enjoy corporate privileges, can be claimed in no other way than as above stated. A legal sanction to the corporate character is, therefore, absolutely necessary, and is always implied.[1]

The distinction between corporations deriving their existence from the king's charter and those which derive their existence from parliament is important. *A royal charter* is a written instrument, in the form of letters-patent, under the great seal, addressed to all the subjects of the realm, containing a grant by the crown to the persons named, of the franchises, powers, and privileges therein mentioned. A *charter of incorporation*, therefore, is the written instrument by which the king creates the corporate body, names it, defines its objects, and confers its powers. Unless restricted in the charter, all of the common-law incidents of a corporation attach to

[1] Wille. 21; Glover, 23; Grant, 6, 7; 1 Kyd, 39; Angell & Am. sec. 69; Bro. Corp. 65; Eastman *v.* Meredith, 36 N. H. 284, 290 (1858), *per Perley*, C. J.; St. Louis *v.* Allen, 13 Mo. 400; St. Louis *v.* Russell, 9 Mo. 503. *Post*, secs. 42, 84, note.

it, but no corporation can pursue objects not warranted by its charter. The charter is the organic act which gives to the corporation both its existence and its peculiar character.[1]

§ 33. **Royal and Parliamentary Charters.** — The *king's charter* may confer upon the corporation it institutes all the usual and ordinary powers of a corporate body, but it cannot invest such a body with extraordinary powers, such as proceeding in a manner different from the common law, or punishing by forfeiture or imprisonment, or conferring an *exclusive* right of trading. When the king grants clauses which are illegal they are void; and if illegal and not confirmed by parliament, no length of time or of usage will make such clauses valid. But *parliament*, in the fulness of its power, may grant to corporations which it erects such powers, ordinary and extraordinary, as it deems proper; and it may, as it has often done, confirm clauses in royal charters which were void, because beyond the king's power to grant.

§ 34. **Assent and Acceptance of Grantee; Revocation.** — The *king* cannot incorporate a body of men *without their assent*. Until his charter has been *accepted*, it is therefore inoperative.[2] When once accepted, the acceptance is irrevocable. The acceptance must be by the grantees; and it is held that a valid acceptance may be made by a majority of the grantees. The charter must be accepted *in toto*, or not at all, for there can be no partial acceptance without the assent of the crown, which must be shown by matter of record. If the corporation be a new one, acceptance of part of the charter is taken as acceptance of all. Acceptance may be shown by user, — by acting under it, as well as by the formal action of the corporate body. After acceptance the *crown cannot resume the grant*, or dissolve or destroy the corporation, without the consent of the grantees or their successors. The crown, at common law, can create a corporation for municipal government in any place where there is not at the time an existing corporation

[1] Outline of municipal charter of the Middle Ages. *Ante*, sec. 6. Charters defined. *Post*, sec. 82.

[2] Acceptance of charter. *Post*, secs. 44, 54, 65; chap. xxi. As acceptance was necessary to make the king's charter operative, the municipal charters which he gave were all given to existing communities having a recognized and organized existence, and in the habit of acting as one body, through elections or agencies or offices. Per *Campbell*, J., in People *v.* Bennett, 29 Mich. 451 (1874); s. c. 18 Am. Rep. 107. Towns and cities, that is, compact bodies of people, have a natural existence, and what may be called a natural *quasi* corporate character. It was so in Rome. *Ante*, sec. 3. And so in England. "Each town was regarded as a corporate community," prior to any actual grant of a charter. Hearn, Government of England, 475, 501. *Post*, secs. 58, 183.

of the same kind, but there cannot be concurrently two corporations for the same place, having the same or similar powers or jurisdiction. But the limitations upon the power of the crown do not apply with respect to municipal corporations *created by parliament.* Its power is, legally speaking, illimitable. It may create or abolish and change at its pleasure, with or without the assent of the people or corporation to be thereby affected. It may change royal charters; but parliamentary corporations cannot be affected, without the consent of parliament, by charters granted by the crown. Except as to the extent of powers which may be conferred, a parliamentary corporation is, at common law, similar to that which is created by the crown.[1]

§ 35 (16). **Constitution of an old English Municipality.** — Prior to 1835 *many of the towns, boroughs, and cities of England were incorporated* in one of the ways mentioned; that is to say, there were in them bodies corporate, established for the local government thereof. There was no uniformity in the constitution or powers of these corporate bodies. The corporation proper was not the town or place, but *a corporate body constituted within it,* with powers or jurisdiction, more or less extensive, to govern the inhabitants. These bodies were established at different times, and from different motives. The first distinct recognition of a municipal corporation was in the 18th of Henry VI. (A. D. 1439), with reference to Kingston-upon-Hull, which had an express charter of incorporation granted to it, for the first time, in that year. Charters had previously been granted to it by different sovereigns, at various times, giving it various privileges, but they did not *incorporate* the place, nor was it incorporated until the charter of 18th Henry VI., which is the first that uses terms of incorporation.[2] Subsequently such corporations were erected from time to time, each with its peculiar constitution, depending on the provisions of the charter or prescriptive usage. The constitution of the corporations was so various, and is so different from the American model, that it requires care to get an accurate idea of it. For illustration, we will take a simple form, viz.: where by charter or by prescription the corporation consists of the mayor, aldermen, and commonalty of a town. Here there are three ranks, classes, or parts: 1, the mayor, or head officer; 2, the aldermen, the number of whom is definite,

[1] Authorities last cited. Respecting the authority of the crown to grant charters to incorporate towns, since the General Municipal Corporations Act of 1835, see Rutter *v.* Chapman, 8 M. & W. 1; Reg. *v.* Boucher, 3 Q. B. 654; s. c. 2 G. & D. 737.

[2] Glover on Munic. Corp. 16.

being fixed by the charter, or by prescriptive usage; 3, the commonalty, that is, the common freemen, whose number is indefinite, and whose rights in the course of time were largely usurped or destroyed.[1] These three classes were denominated the *integral parts* of the corporation, and no corporation was complete (except it be otherwise provided by the charter) unless the mayor, or head officer, a majority of the definite class (that is, a majority of the aldermen), and some members of the indefinite class, or commonalty, be in existence. Hence, during a vacancy in the office of mayor, no valid corporate act can be done except to elect another, since without a mayor the corporate body is incomplete. Hence, also, at every corporate meeting it was essential, at common law, that there should be present the mayor, or head officer, whose duty it was to preside, also a majority of each definite integral class, and some members of each indefinite class, if there be more than one such class.

§ 36. **Municipal Corporations Reform Act of 1835, and Revised Act of 1882.** — In the course of time, as we have already pointed out, *great abuses had crept into these bodies,* which parliament had frequently been obliged to redress.[2] Complaints of grievances were universal, and misrule, confusion, and internal disputes were so general that the municipal system of government fell into great and deserved disrepute. As a measure of reform, the MUNICIPAL CORPORATIONS ACT of 5 and 6 Wm. IV. ch. lxxvi., was devised and enacted.[3] "I cordially concur," said the king, "in this im-

[1] *Ante,* sec. 8.

[2] Introductory chapter, *ante,* sec. 8. Luehrman *v.* Taxing Dist., 2 Lea (Tenn.), 425.

[3] The reformed House of Commons presented an address to William IV., requesting the appointment of a commission to inquire into the state of the municipal corporations in England and Wales. The commission which was appointed made a thorough examination of the condition of the various boroughs, and their report disclosed abuses and defects which it seems marvellous that any spirited people so long endured. See chap. i., *ante,* sec. 8.

OFFICIAL REPORT *as to the* ABUSES AND DEFECTS *found to exist in the municipal corporations of England and Wales.* — The commission ascertained the existence of two hundred and forty-six corporations in England and Wales, exercising municipal functions. The population of these corporate places exceeded two millions of people. Some of these corporations claimed to act under prescriptive custom, but most of them under several charters, forming a continued series from a very early date, but generally under charters granted from the reign of Edward I. down to the reign of George IV. inclusive. The number of corporators stated to be definite, in fifty boroughs, varied in most cases from under ten to thirty, and those indefinite, in one hundred and sixty-two boroughs, varied from twelve to five thousand, but usually averaged from fifty to two hundred corporators. The *titles to freedom, or citizenship,* generally comprehended those arising from birth, servitude, marriage, purchase, gift, or election. The *governing bodies* were formed by the close and corrupt system

portant measure, which is calculated to allay discontent, to promote peace and union, and to procure for those communities the advantages of responsible government." This act organizes all of the municipal corporations of England and Wales *upon a uniform model.* It does not altogether destroy their previously existing lawful corporate powers, but it does sweep away all laws, statutes, charters, and usages inconsistent with or contrary to its provisions. It defines who shall be burgesses or citizens, making the right essentially to depend upon occupancy of houses or shops within the

of *self-election* in a great majority of the municipalities. The corporate officers, such as the mayor, or other head of the corporation, the recorder — frequently unprofessional — and the town-clerk, were appointed by the self-elected governing body from its own immaculate conclave. Some of the municipalities possessed exclusive *criminal jurisdiction*, extending to the trial of felonies and all other offences, whereas many appear never to have had any criminal jurisdiction. Several *boroughs* had civil jurisdiction extending to the decision of all actions, — some extending to the decision of personal and mixed actions; others to the decision of personal actions; while in a considerable number no civil jurisdiction appeared ever to have existed. *The property* in some few boroughs was trivial, but the revenue generally averaged from £500 to £1,000 in each, while in some the property exceeded £50,000 per annum. In a few towns corporate the accounts were printed for distribution and audited publicly; but in most cases the accounts were neither duly kept, nor audited, nor published, besides being inaccurate and in a generally unsatisfactory state. The annual income of these municipal corporations amounted to about £366,000, and the expenditure to £377,000, while the debt in one hundred and thirty-three exceeded the sum of two millions sterling. Throughout the course of the investigation of the commissioners there were perceptible the same complaints, — of magistrates ill-qualified by education and habits for their situations, generally partial, and sometimes corrupt; of courts, which might be made the instruments of much local advantage, falling into disuse through defects of their original constitution and their recent maladministration; of juries improperly selected by reason of notorious party bias; of revenue misapplied; of debt contracted and of property alienated; of the absence of all accounts and the denial of all accountability by certain corporations; of the insufficiency of the police, the neglect of paving and lighting, and the want of those municipal accommodations for which the public property committed in trust to the corporation would, if duly administered, be amply sufficient to provide. Having given a general view of the ordinary constitution of the various municipalities, the commissioners next proceeded to specify some of their defects. The most common and most *striking defect* in the constitution of the municipal corporations was, that the *corporate bodies existed independently of the communities among which they were found.* The corporators looked upon themselves, and were considered by the inhabitants, as separate and exclusive bodies; they had powers and privileges within the towns and cities from which they were named, but in most places all *identity of interest* between the corporation and the inhabitants disappeared. That was the case even where the corporation included a large body of inhabitant freemen. It appeared in a more striking degree as the powers of the corporation had been restricted to smaller numbers of the resident population, and still more glaringly when the local privileges had been conferred on *non-resident freemen*, to the exclusion of the inhabitants to whom they rightfully ought to belong. The privilege of electing *members of parliament* being that which, before the passing of the Reform Act, conferred upon the self-elected governing bodies of close corporate towns their principal importance, and the rewards for political services which the patron was accustomed to distribute among them, caused this function to be considered in many places as the sole object of their institution. The power so monopolized, and employed in a mode unsuitable to the altered circumstances of the times, led to various abuses of the system. The custom of keeping the number of corporators as low as possible may be referred to the wish for preserving the parliamentary franchise rather than to the desire of monopolizing the municipal authority, which had been coveted only as a means of securing the other and more highly prized privilege. A great number of corporations were preserved solely as *political engines,* and the towns to which they belonged derived no benefit, but often much injury, from their existence. To maintain the political ascendency of a party, or the political influence of a family, was the one end and object for which the powers entrusted to a numerous class of these bodies have been exercised. This object was systematically pursued in the admission of freemen, resident or non-resident; in their election of municipal functionaries for the council or the magistracy; in the appointment of subordinate officers and the local police; in the administration of charities entrusted to the municipal authorities; in the expenditure of the corporate revenue, and in the management of the corporate property. The most flagrant abuses arose from this perversion of municipal privileges to political objects. Thus the inhabitants had to complain, not only that the election of their magistrates and other municipal functionaries was made by an inferior class of themselves, or by persons unconnected with the town, but also of the disgraceful practices by which the magisterial office was frequently obtained; while those who, by character, residence, and property, were best qualified to direct and control its municipal affairs were excluded from any share in the elections or management. The exclusive and party spirit belonging to the whole corporate body appeared in a still more marked manner in the councils by which in most cases it was governed. These councils were usually *self-elected*, and held their offices *for life.* They were commonly of *one political party*, and their proceedings were mainly directed to secure and perpetuate the ascendency of the party to which they belonged. Individuals of adverse political opinions were, in most cases, systematically excluded from the governing body. These councils, which embodied the opinions of a single party, were entrusted with the nomination of magistrates, of the civil and criminal judges, often of the superintendents of police, and were, or ought to have been, the leaders in every measure that concerned the interests and prosperity of the town. So far from being the representatives either of the population or of the property of the town, they did not represent even the privileged class of freemen; and being elected for life, their proceedings were unchecked by any feeling of responsibility. The commissioners reported that there prevailed amongst the inhabitants of a great majority of the incorporated towns a general and a just dissatisfaction with their municipal councils, whose powers were subject to no proper control, whose acts and whose proceedings, *being secret*, were unchecked by the influence of public opinion; a distrust of the municipal magistracy, tainting with suspicion the local administration of justice, and often accompanied with contempt of the persons by whom the law was administered; a discontent under the burdens of local taxation, while revenues that ought to be applied for the public advantage were diverted from their legitimate use, and sometimes wastefully bestowed for the benefit of individuals, sometimes squandered for purposes injurious to the character and morals of the people. The commissioners therefore felt it their duty to represent to his Majesty that the municipal corporations of England and Wales *neither possess nor deserve* the confidence or respect of his Majesty's subjects, and that a thorough reform must be effected before they can become what they ought to be, — useful and efficient instruments of local government. Glover's Historical Summary of the Corporate System of Great Britain and Ireland, pp. 38 to 45. The result was the municipal Corporations Act of 5 & 6 Wm. IV. chap. lxxvi. See chap. 1, *ante*, sec. 8.

borough, and the payment of taxes for the relief of the poor. These burgesses or citizens elect, from time to time, a fixed number of proper persons to be councillors, and the council (composed of the mayor, aldermen, and councillors) elect, from qualified persons, the aldermen, and also the mayor and the ministerial and inferior corporate officers. *The council* is the governing body of the corporation, and its most important powers are defined by various acts of parliament. It will thus be perceived that the original power is in the burgesses or citizens; that the act adopts the representative system, and proceeds upon the idea that a substantial interest in the incorporated place, which is made necessary in order to be a burgess or citizen, will induce care in the selection of councillors; and that frequent elections will prove the most effectual check on those entrusted with the administration of the municipal authority, which is carefully limited and defined.

The act of 1835, with its amendments, re-enacted and consolidated by the Municipal Corporations Act of 1882, 45 and 46 Vict. ch. 50; L. R. 18 Stats. 205, which went into force January 1, 1883, constitutes the body of the existing English municipal corporations system. The leading provisions of the Act of 1835 are so important to be understood in the study and application of the English cases decided thereunder to questions arising in this country, and contain so much of interest to the lawyer, the legislator, and the municipal inquirer, that they are given or referred to in the note to this section.[1] Be-

[1] MUNICIPAL CORPORATIONS ACT OF 5 AND 6 WM. IV. CHAP. LXXVI., ENACTED SEPT. 9, 1835, AND CODIFIED BY THE MUNICIPAL CORPORATIONS ACT OF 1882, 45 AND 46 VICT. CHAP. L. — NAME, etc. This act commences by reciting, that "whereas divers bodies corporate at sundry times have been constituted within the cities, towns, and boroughs of England and Wales, to the intent that the same might forever be and remain well and quietly governed; and it is expedient that the charters by which said bodies corporate were constituted should be altered in the manner hereinafter mentioned; be it therefore enacted, that so much of all laws, statutes, and usages, and so much of all royal and other charters, now in force, relating to the several boroughs named in schedules (A and B) annexed, as are inconsistent with, or contrary to, this act, *shall be*, and the same are hereby, *repealed and annulled*" (sec. 1), with the reservation of certain rights, beneficial exemptions, and franchises to the freemen or citizens. (Secs. 2–5.) These schedules contain an alphabetical list of all the incorporated boroughs, with the number of wards, number of aldermen, and number of councillors, and style of the corporate body in each; thus: "*Bath*, — Seven wards, fourteen aldermen, forty-two councillors. *Corporate name*, — Mayor, Aldermen, and Citizens of the City of Bath." If it be a *borough* instead of a city, the word "Burgesses" is used instead of "Citizens." The act provides that the body corporate in each of said places "shall take and bear the name of the Mayor, Aldermen, and Burgesses [or Citizens, in case of a city] of such borough, and by that name shall have perpetual succession, and shall be capable in law, *by the council* hereinafter mentioned of such borough, to do," &c. (Sec 6.) Name under Act of 1882 is same. (Sec. 8.) "MUNICIPAL CORPORATION," as used in the Act of 1882, means the body corporate constituted by

tween 1835 and 1882, not less than fifty-five acts were passed more or less relating to municipal corporations, and in general amenda-

the incorporation of the inhabitants of a borough. Act 1882, sec. 7. "The municipal corporation of a borough shall be capable of acting by the council of the borough, and the council shall exercise all the powers vested in the corporation by this act or otherwise. The Council shall consist of the Mayor, Aldermen, and Councillors." Act 1882, sec. 10.

MEMBERSHIP. — Before the passage of the act under consideration, the qualifications for members or officers of municipal corporations depended upon the charter, usage, or by-laws of the particular corporation, the usual qualifications being that the person claiming to be admitted to the freedom of the corporate town should be the son of a freeman, or should have served an apprenticeship to a freeman, or (in some instances) married his daughter, or acquired the privilege by gift or purchase; but this act provides that hereafter "no person shall be elected, made, or admitted a burgess or freeman of any borough by gift or purchase." (Sec. 3.) It fixes the *qualification of burgesses or citizens*, thus: "Every male person, of full age, who shall have occupied any house, warehouse, counting-house, or shop, within any borough" for three years, "and during the time of such occupation been an inhabitant householder within the borough, or within seven miles of the borough, shall, if duly enrolled, *be a burgess of such borough and a member of the body corporate of the mayor, aldermen, and burgesses of such borough*, provided he shall have been rated in respect to the premises so occupied by him to all rates made for the relief of the poor within the parish." (Sec. 9.) *Such resident occupiers and taxpayers, only*, are members of the corporate body of the place; all the other inhabitants are no part of the municipal corporation, though subject to its government.

The Act 1882 changes the qualifications of a burgess from three years to one year, and in some other minor respects. (Sec. 9.) *Women* may vote at municipal elections if otherwise qualified, but not married women. Act 1882, sec. 63, based on the Act of 1872 (32 & 33 Vict. chap. lv. sec. 9), which first admitted women to the municipal franchise. The Married Woman's Property Act (33 & 34 Vict. chap. xciii.), does not remove or affect the political disabilities of married women. See Regina *v.* Harrald, L. R. 7 Q. B. 361.

COUNCILLORS, HOW CHOSEN, &c. — Upon the first day of November, in every year, the *burgesses* so enrolled in every borough *shall openly assemble*, and elect from the persons *qualified to be councillors* [who must have the qualifications of a burgess, and also increased pecuniary and rating qualifications] the councillors of the borough" (sec. 40), of whom one-third part go out of office annually. The elections are held before the mayor and assessors, and the mode of voting (which is exactly the opposite of the ballot in America), is by delivering to the officers of election a voting-paper containing the name and abode of the person voted for, and signed with the name and abode of the voter. It is thus seen that the burgesses elect the councillors, whose qualifications are fixed by the statute, and whose number in each incorporated place is definite. Under Act 1882, the term of councillor is three years, and his qualifications are somewhat changed from those in the Act of 1835.

ALDERMEN, HOW CHOSEN. — On the ninth day of November, in every third succeeding year, the council for the time being are directed to elect, "*from the councillors, or from persons qualified to be councillors*, the aldermen of the borough," who are one-third in number of the councillors. (Sec. 25.) The manner of election is prescribed, namely, by every member of the council delivering to the mayor or chairman a voting-paper signed by the member voting, which the mayor or chairman is directed openly to read. (Act. 7 Wm. IV. and 1 Vict. chap. lxxviii. sec. 14; 16 and 17 Vict. chap. lxxix. sec. 13.) Term of aldermen under Act of 1882, is six years. (Sec. 14.)

MAYOR, HOW CHOSEN. — At the meeting of the council, to be held on the ninth day of November, each year, the council are directed to *elect, out of the aldermen or*

§ 37 *a*. **Number and frequency of Corporate Creations.** — The *existing law of corporations* is essentially of modern growth, and is yet in a state of development. Having occasion to refer to this

"So far then as the great modern towns owe their forms of government to the past, it is to the general past of municipal institutions in England rather than to anything of a determining kind in their own individual histories. The Municipal Corporations Reform Act of 1835 preserved the old government of towns by a mayor, aldermen, and councillors, while throwing open the franchise to the new classes of electors who had received the borough parliamentary franchise in the reform of 1832, and making the councillors directly representative of the burgesses. Since 1835, the framework of English municipal government has been simple, definite, regular, and easily understood; and the new fabrics have been elaborated upon that framework."

Practical workings of the English system contrasted with those of the American system. — The writer last quoted (*Ib.* pp. 216, 217), thus contrasts the theory and workings of the English system with those of our American municipalities: "Many earnest and intelligent municipal reformers, especially in New York and the Eastern States, have advocated the plan of greatly increasing the authority of the mayor, so that he may be held more definitely responsible for the administration of the various executive departments. It is the plan of a periodically elective dictatorship. As a remedy for the evils that grow out of interferences by the State and the farming out of certain departments such as parks or water-supply to special boards or commissions not responsible to the mayor or the council or the people, and further as a temporary measure of defence against untrustworthy and corrupt counsels, this somewhat heroic plan of making the mayor a dictator, or to use the Cromwellian euphemism, 'a protector,' seems to have a great deal in its favor. But it is unrepublican, and it does not at all solve the difficult problem of harmonizing the authority of the mayor and the authority of the council. The relation between the two cannot at best be other than that of a shifting, unprofitable, and illogical compromise.

"It would seem a little strange that the one school of reformers should not have been opposed by another which would advocate the concentration of authority and responsibility in the council. Logically, the mayor must eventually swallow the council or the council must swallow the mayor, if political forces are to be accorded some degree of natural play; and the one-man power is on the decline everywhere in this age. Municipal governments, elsewhere than in the United States, after having constituted a ruling body do not erect a separate one-man power and give it the means to obstruct the ruling, administrative body and to diminish its scope and responsibility. The mayor elsewhere is an integral part of the council. English, Scotch and Irish municipal government is simply government by a group of men who are to be regarded as a grand committee of the corporation, — the corporation consisting of the whole body of burgesses or qualified citizens. In Glasgow it is a committee of fifty; in Edinburgh, of forty-one; in Manchester, of seventy-six; in Birmingham, Liverpool and most of the large English towns, of sixty-four; in Dublin, of sixty; in Belfast, of forty; and in the other incorporated towns of the United Kingdom it varies from twelve to sixty-four, according to their size. So far as these bodies have authority to pass by-laws at all, their authority is complete, and nobody obtrudes a veto. They appoint and remove all officials. They have entire charge of municipal administration, distributing the work of departmental management and supervision to standing committees of their own number, which they organize and constitute as they please. If such a local government cannot be trusted, the fault is with popular institutions. It is quite certain to be as good a government as the people concerned deserve to have. The location of responsibility is perfectly definite. When the Glasgow city improvement scheme became unpopular with the voters because it was proving more expensive than its projectors had promised, the chairman of the committee was retired by his constituents at the end of his term. The taxpayers hold every member of council responsible for his votes. The system is as simple, logical, and effective as the American system is complicated and incompatible with harmonious and responsible administration. City government in America defeats its own ends by its 'checks and balances,' its partitions of duty and responsibility, and its grand opportunities for the game of hide-and-seek. Infinitely superior is the English system, by which the people give the entire management of their affairs to a big committee of their own number, which they renew from time to time."

subject, a distinguished judge said: "Formerly but few private corporations were created, and these cut so small a comparative figure in the destinies of states, that they attracted but little attention on the part of law-makers, and were but little studied by the courts. Even in England, until a very recent period, both public and private corporations were created by royal prerogative, without the intervention of parliament, and were invested with such powers and privileges as favorites might ask, or the public good be supposed to require. But even then such corporations were rare. Now they have become among the greatest means of state and national prosperity. It is probably true that more corporations were created by the legislature of Illinois, at its last session, than existed in the whole civilized world at the commencement of the present century."[1] This state of things has necessarily led to a more careful study of the whole subject, both by legislators and the courts. Not only are commercial or business corporations being thus multiplied, but public and municipal corporations, in all of the States and Territories of the United States, are constantly created and universally adopted as part of the ordinary machinery of government, so that it is perhaps impossible to find a town or city of any considerable size not incorporated and invested with the power of local government. There are in this country many hundreds of incorporated places acting under special charters granted by the States or general incorporation acts passed by them.

§ 38 (18). **Congress may create.** — The *power of Congress to create or authorize the creation of corporations*, public or private, whenever these become an appropriate means of exercising any of the constitutional powers of the general government, or of facilitating its lawful operations in the States or Territories, must be taken to be conclusively settled by the Supreme Court.[2] This power has

[1] *Per Caton*, J., Railroad Co. *v.* Dalby, 19 Ill. 353 (1857). See also similar observations of *Rogers*, J., in Bushell *v.* Insurance Co., 15 Serg. & Rawle (Pa.), 176, 177.

[2] McCulloch *v.* Maryland, 4 Wheat. 316; Osborn *v.* Bank of U. S., 9 Wheat. 738; Thompson *v.* Pacific Railroad Co., 9 Wall. 579; Pacific Railroad *v.* Lincoln Co., 1 Dillon, C. C. 314 (1871); Morawetz on Corp. (2d ed.) sec. 9.