§ 160. **The Field reviewed; The Lessons it teaches.** — Hundreds of municipal and public corporations in the country have rendered themselves bankrupt by the mania to aid railways, and hundreds of others are groaning under oppressive burdens thereby occasioned. In looking over the field, it is now plain that most of the evils originating from this source, and from which the municipalities are suffering, have sprung not so much from the mere power to aid railways, as from the manner in which the power has usually been conferred. If municipalities had been forbidden to issue their bonds, and permitted to give such aid only to the extent of taxes, to be levied within a short limited period of time, this *pay-as-you-go policy* would have been an effectual restraint upon extravagance in this direction. But the power to give the aid was usually accompanied with express authority to issue bonds, payable twenty or thirty years distant, in general without limit as to amount; and thus those who created the debt were almost indifferent as to the amount of it, since the main burden was expected to fall on posterity. This led to the wildest extravagance. Bonds thus issued have been treated by the Supreme Court of the United States as possessing all the attributes of commercial paper, and unimpeachable in the hands of innocent holders for value, notwithstanding the frauds of the municipal officers, or non-compliance with the conditions upon which the bonds were authorized to be issued. Under the doctrine of the Supreme Court the usual restraints and checks upon the power have proved

at or near the city, *to be used for manufacturing purposes*, was held unconstitutional, and the bonds void which had been issued to raise the money thus appropriated. The case was distinguished from those relating to railway aid bonds, and also construes the provision of the Constitution of the State that "the legislature shall pass no *special act* conferring *corporate powers*." *Ante*, sec. 46. And more recently the Court of Appeals of *New York* have decided in the same way, holding an act to authorize municipal bonds to *pay for stock in a private corporation to construct a water privilege and to manufacture lumber*, to be void. Weismer *v.* Village of Douglass, 64 N. Y. 91 (1876). Text approved in Feldman *v.* Charleston, 23 S. C. 57, where bonds issued by a city, under legislative authority, for the purpose of *lending them to individuals* to assist them in rebuilding the edifices destroyed by a *great fire*, were held void. A statute authorizing a municipality to issue bonds, to be paid by taxation, *to aid in the improvement of a water-power*, and, connected therewith, authorizing the council of the municipality to secure such water-power as might be deemed needful for the use of the fire department, held to be unconstitutional, as authorizing a debt and tax for a private purpose. Coates *v.* Campbell, 37 Minn. 498.

Further, as to extent and nature of the taxing power, and distinction between public and private use, see *post*, secs. 735, 736; Bloodgood *v.* Railroad Co., 18 Wend. 65; Jenkins *v.* Andover, 103 Mass. 94, holding invalid a statute authorizing taxation in favor of a private incorporated academy. Same principle: Curtis *v.* Whipple, 24 Wis. 350; People *v.* Salem, 20 Mich. 452; Freeland *v.* Hastings, 10 Allen, 570; Tyson *v.* School Directors, 51 Pa. St. 9; Thompson *v.* Pittson, 59 Me. 545 (1871); Savings Assoc. *v.* Topeka, 3 Dillon, 376; note 15, Am. & Eng. Corp. Cas. 356.

practically valueless, since if they were disregarded or evaded and the bonds issued and negotiated, they became valid and enforceable obligations. The result of legislative authority thus conferred and thus construed is seen in the vast municipal debt of the country, largely created in aid of railways, and in our municipalities, blighted and burdened with debt. This retrospect after the battle has been lost will tend to confirm the dissenting judges in their opinions, although they are compelled to acknowledge the law to be otherwise settled.[1]

§ 161 (106). **Express Power essential.** — The courts concur, however, with great unanimity, in holding that there is *no implied authority in municipal corporations to incur debts or borrow money in order to become subscribers to the stock of railway companies*, and that such power must be conferred by *express* grant.[2] To become stockholders in private corporations is manifestly foreign to the purposes intended to be subserved by the creation of corporate municipalities; the practice of bestowing such an abnormal power is of modern origin, and hence the rule that the authority must be specially conferred, and cannot be deduced by inference or implication from the ordinary municipal grants.[3]

[1] See further, chapter xiv. on Contracts, *post*.

[2] The power to become a stockholder in a railroad company must be expressly conferred upon a municipal or public corporation, Kelley *v.* Milan, 127 U. S. 139; Norton *v.* Dyersburg, 127 U. S. 160; Wells *v.* Supervisors, 102 U. S. 625; Concord *v.* Robinson, 121 U. S. 165; Kelly *v.* Town of Milan, 21 Fed. Rep. 842; Wetumpka *v.* Wetumpka Wharf Co., 63 Ala. 611; Welch *v.* Post, 99 Ill. 471; Katzenberger *v.* Aberdeen, 16 Fed. Rep. 745. Authority "to obtain money on loan on the faith and credit of a city for the purpose of contributing to works of internal improvement" held to authorize the city to *guarantee payment of the bonds* of a railroad company. Savannah *v.* Kelly, 108 U. S. 184. See *post*, sec. 507 *et seq.*

[3] Aurora *v.* West, 22 Ind. 88, 508 (1864); Starin *v.* Genoa, 23 N. Y. 439 (1869); Gould *v.* Sterling, *Ib.* 439, 456; Atchison *v.* Butcher, 3 Kan. 104 (1865); Burnes *v.* Atchison, 2 Kan. 454; Bank *v.* Rome, 18 N. Y. 38; Bridgeport *v.* Housatonic Railway Co., 15 Conn. 475; Marsh *v.* Fulton Co., 10 Wall. 676 (1870); Cook *v.* Manufacturing Co., 1 Sneed (Tenn.), 698 (1854); Gaddis *v.* Richland Co., 92 Ill. 119; Pitzman *v.* Freeburg, 92 Ill. 111; McCoy *v.* Brant, 53 Cal. 247; Lewis *v.* Shreveport, 3 Woods C. C. 205; Nichol *v.* Nashville, 9 Humph. (Tenn.) 252; City and County of St. Louis *v.* Alexander, 23 Mo. 483 (1856); Jones *v.* Mayor, &c., 25 Ga. 610 (1858); Oebricke *v.* Pittsburg, U. S. C. C. (1859); 7 Am. Law Reg. 725; Duanesburg *v.* Jenkins, 40 Barb. 574; French *v.* Teschemaker, 24 Cal. 518 (1864); People *v.* Mitchell, 35 N. Y. 551 (1866); St. Joseph Township *v.* Rogers, 16 Wall. 644 (1872); English *v.* Chicot County, 26 Ark. 454 (1871); Thompson *v.* Lee County, 3 Wall. 327; Commercial Bank *v.* Iola, 2 Dillon C. C. R. 353 (1873); s. c. 20 Wall. 655. "It is well settled, that a municipal corporation, in order to exercise the power of becoming a stockholder in a railroad corporation, must have such power *expressly conferred* upon it by a grant from the legislature; and that even the *power*

Accordingly, where a city was, by charter, specifically authorized to construct wharves, docks, piers, water-works, works for lighting the city, &c., and was also authorized upon certain conditions to create a debt, this was considered to mean a debt for some of these specified purposes, and not to empower the corporate authorities to issue bonds to aid in the construction of a railroad.[1] So there is no

to subscribe for such stock does not carry with it the power to issue negotiable bonds in payment for the subscription, unless the power to issue such bonds is expressly or by reasonable implication conferred by statute." *Blatchford*, J., in Kelley *v.* Milan, 127 U. S. 139, citing Pulaski *v.* Gilmore, 21 Fed. Rep. 870; Milan *v.* Tennessee Central R. R., 11 Lea, 330; Marsh *v.* Fulton County, 10 Wall. 676; Wells *v.* Supervisors, 102 U. S. 625; Ottawa *v.* Carey, 108 U. S. 110; Daviess County *v.* Dickinson, 117 U. S. 657.

It is also held in this case (Kelley *v.* Milan, *supra*) that where the power to subscribe for railroad stock and to issue bonds therefor is wanting, an agreement made by the mayor of the municipality, by which a decree recognizing the validity of the bonds is entered, is ineffectual for that purpose. More fully on this point see *post*, chap. xiv. "No lawyer doubts that a borough can only subscribe to a railroad when expressly authorized by law." *Black*, C. J., in Sharpless' Case, cited Pennsylvania Railway Co. *v.* Philadelphia, 47 Pa. St. 189. A *railroad* is such a "road" as is embraced in the terms of a charter by which the common council of a city were authorized "to take stock in any chartered company for making roads to said city." Railroad Co. *v.* Evansville, 15 Ind. 395 (1860); Aurora *v.* West, 9 Ind. 74; *post*, chap. xiv., Contracts. The legislature may, before (Aspinwall *v.* Daviess County, 22 How. 364), if not, indeed, after the subscription is made, but before it is paid for, annul the proceeding and authorize the municipal corporation to withdraw the subscription and release its right to the stock. People *v.* Coon, 25 Cal. 635. Extent of legislative power. *Ante*, chap. iv. Text approved. Jacksonport *v.* Watson, 33 Ark. 704.

Authority to *subscribe for stock in a railroad* company held not to carry with it the implied power to issue bonds therefor. Wells *v.* Supervisors, 102 U. S. 625; Claiborne County *v.* Brooks, 111 U. S. 400; Norton *v.* Dyersburg, 127 U. S. 160; Kelley *v.* Milan, 127 U. S. 139 (but holding that the power to issue bonds may be conferred by a reasonable implication from the power granted), *ante*, secs. 123, 124, 127; *post*, sec. 507 *et seq.* Nor does a grant of power to appropriate money to aid a railroad, with a provision directing a levy of taxes to meet the appropriation, include power to issue bonds. Concord *v.* Robinson, 121 U. S. 165; Wells *v.* Supervisors, 102 U. S. 625.

[1] Lafayette *v.* Cox, 5 Ind. (Port.) 38 (1854). As to rights of bondholders, however, see *post*, ch. xiv. on Contracts, and decisions in the national and State courts, there cited. Power *in general* to the city council of Charleston, by the charter of 1783, to pass, *inter alia*, "every *other* by-law as shall appear to the city council requisite and necessary for the security, *welfare, and convenience* of said city," was held by the Court of Errors to authorize the city to subscribe to the stock of railroad companies within or without the State. Copes *v.* Charleston, 10 Rich. (S. C.) Law, 491 (1857); see City Council *v.* Baptist Church, 4 Strob. Law, 306, 308, for preamble to the charter of Charleston. There can be little doubt that this is pressing the constructive powers of the corporation to an unwarrantable extent.

Construction of special acts or charters held to give power to take stock and issue bonds. Meyer *v.* Muscatine, 1 Wall. 384 (1863); Curtis *v.* Butler County, 24 How. 435; Gelpcke *v.* Dubuque, 1 Wall. 220; City and County of St. Louis *v.* Alexander, 23 Mo. 483; Railroad Co. *v.* Otoe County, 1 Dillon C. C. 338 (1871); Rogers *v.* Burlington, 3 Wall. 654 (compare Chamberlain *v.* Burlington, 19 Iowa, 395); Fosdick *v.* Perrysburg, 14 Ohio St. 472;

power in a municipal corporation (even supposing it to be competent for the legislature to confer such power), as incidental to the usual grants of municipal authority, to take stock in a *manufacturing company* located in or near the corporation,[1] or to aid or engage in other enterprises, essentially private.[2]

§ 162 (107). **Effect of Special Power on existing Charter Limitations of the Taxing Power.** — Whether *special authority* to a municipality to borrow money to pay for stock subscribed to a railway company will *impliedly repeal, pro tanto, existing charter limitations upon the rate of taxation*, is a question depending upon construction, and in relation to which the courts have differed. But the strong inclination of the Supreme Court of the United States seems to be in favor of that construction which restricts such limitations to the exercise of the power of taxation in the ordinary course of municipal action.[3]

Goshorn *v.* County, 1 West Va. 308; Taylor *v.* Newberne, 2 Jones (N. C.) Eq. 141; Caldwell *v.* Justices, 4 *Ib.* 323; People *v.* Spencer, 55 N. Y. 1 (1873); Decker *v.* Hughes, 68 Ill. 33 (1873); People *v.* Pueblo Co., 2 Col. 360 (1875); English *v.* Chicot Co., 26 Ark. 454 (1871); distinguishing Seybert *v.* Pittsburgh, 1 Wall. 272; Veeder *v.* Lima, 19 Wis. 280 (1865). The opinion of *Dixon*, C. J., contains an interesting discussion of the questions presented by that case.

Construction of acts held not to grant power to subscribe for stock and issue bonds. Kelley *v.* Milan, 127 U. S. 139; Norton *v.* Dyersburg, *Ib.* 160.

[1] Cook *v.* Manufacturing Co., 1 Sneed (Tenn.), 698 (1854); Com. Nat. Bank *v.* Iola, 2 Dillon C. C. R. 353 (1873).

[2] Clark *v.* Des Moines, 19 Iowa, 199 (1865); Hanson *v.* Vernon, 27 Iowa, 28; Cooley, Const. Lim. 212. A city corporation cannot subscribe for stock in a *steamship line* without express legislative authority. Pennsylvania Railroad Co. *v.* Philadelphia, 47 Pa. St. 189; and since the new Constitution of Pennsylvania (art. xi. sec. 7, Amendment to Constitution, 1857, *supra*, sec. 157, note), the legislature cannot give that power. Where a charter recited its purpose to delegate to the city authorities power to make such ordinances as the "contingencies, or the *local* circumstances" of the corporation might require, and gave "full power and authority to make such assessments on the inhabitants of the city, or those who hold taxable property therein, for the safety, benefit, and advantage of the city, as shall appear to them expedient," the court were of opinion that the city might assess a tax upon the real estate within the corporation for the purpose of constructing a canal "for *manufacturing purposes*, and for the better securing an abundant supply of *water for the city*," and if it could not, yet that it was competent for the legislature, as it did by a subsequent act, to adopt and confirm the action of the city in passing such an ordinance. Frederick *v.* Augusta, 5 Ga. 561 (1848). Aside from the curative act, the correctness of the view taken by the court is by no means clear. *Ante*, secs. 79, 158, 159.

[3] Butz *v.* Muscatine, 8 Wall. 575 (1869). *Contra*, Clark *v.* Davenport, 14 Iowa, 494; Learned *v.* Burlington, 2 Am. Law Reg. (N. S.) 394, and note; Leavenworth *v.* Norton, 1 Kan. 432; Burnes *v.* Atchison, 2 Kan. 454. And see Commonwealth *v.* Pittsburgh, 34 Pa. St. 496; Amey *v.* Allegheny City, 24 How. (U. S.) 364; Fosdick *v.* Perrysburg, 14 Ohio St. 472; Cumberland *v.* Magruder, 34 Md. 381 (1871); see Assessors *v.* Commissioners, 3 Brews. (Pa.) 333; State *v.* Guttenburg, 39 N. J. L. 660. In Quincy *v.* Jackson, 113 U. S.

§ 163 (108). **Power to issue Bonds absolutely essential; Conditions precedent to its Exercise must be complied with.** — If the *power* to issue bonds in aid of railway and other like public enterprises does not exist, they are void into whosesoever hands they may come.[1] The power, when it has been conferred, to aid or engage in extra-municipal enterprises, being extraordinary in its nature and burdensome to the citizen, *must* (except as modified by the doctrine of estoppel in favor of the *bona fide* holders of the securities) *be strictly pursued* according to the terms and conditions of the grant conferring it. Thus, under an act authorizing town officers to borrow money upon the credit of the town, and to pay it over to a railroad corporation, to be expended by it "in grading and constructing a railroad," taking in exchange its stock at par, it is not within the power of municipal officers to make a direct exchange of the bonds of the town, even for an equal nominal amount of stock, as this leaves it in the power of the railroad corporation to sell such bonds at a discount.[2] So in a case where a county had by the legislative act no authority to issue its bonds to the railroad company unless upon the sanction of a previous vote after *thirty days' notice of the election* to be held for that purpose, the Supreme Court of Illinois

332, the Supreme Court of the United States held that a power to levy taxes, to pay debts, and for general expenses, not exceeding fifty cents on each hundred dollars, related only to debts and expenses for the ordinary purposes of the city, and not to such as were incurred under a special authority, — as, a debt incurred by subscribing to the stock of a railroad under authority of a statute which was construed to confer authority to make a levy, for the payment of the debt, in excess of the limitation above recited. This case distinguished from United States *v.* Macon County, 99 U. S. 582; for a statement of which see *post*, sec. 851.

[1] Marsh *v.* Fulton County, *supra;* Allen *v.* Louisiana, 103 U. S. 80; Com. Bank *v.* Iola, 2 Dillon, 353 (1873), affirmed in Supreme Court, 20 Wall. 655; Sav. Assoc. *v.* Topeka, 3 Dillon, 376 (1874); Weismer *v.* Village of Douglass, 64 N. Y. 91 (1876); Clay *v.* County, 4 Bush (Ky.), 154. See further, chapter xiv. on Contracts, *post*, where the rights of *bona fide* holders of such instruments are considered at length. Dunovan *v.* Green, 57 Ill. 63; Lynde *v.* Winnebago County, 16 Wall. 6 (1873); James *v.* Milwaukee, 16 Wall. 159 (1872); *post*, sec. 553; Police Jury *v.* Britton, 15 Wall. 566; Gould *v.* Paris, 68 Tex. 511.

[2] Starin *v.* Genoa, 23 N. Y. 439; Gould *v.* Sterling, *Ib.* 439, 456. In the case last cited, *Selden*, J., p. 460, remarks: "In the present case the only authority given (to the town) by the act is to borrow upon the bonds of the town. No express power to sell the bonds is given, and no such power, can, I think, be implied. To borrow money, and give a bond or obligation for it, and to sell a bond or obligation for money, are by no means identical transactions. In the one case the money and the bond would, of course, be equal in amount; in the other they might or might not be equal." Whether such a defence would be available against a *bona fide* holder of the bonds was not determined. See *post*, sec. 526. As to these cases, see chapter xiv. on Contracts, *post*. See Woods *v.* Lawrence County, 1 Black, 386; Moran *v.* Miami County, 2 Black, 722. That such a defence is not available against a holder for value, see *post*, sec. 515 *et seq.*

held, in a *direct proceeding against the county to enjoin it from issuing its bonds*, that although there was an election at which a majority voted in favor of the subscription, yet the failure to give the thirty days' notice was a fatal defect, and the issue of the bonds was restrained.[1]

§ 164. **Estoppel in favor of bona fide Holder of Negotiable Bonds.** — It may be observed in conclusion that *the Supreme Court of the United States*, in the municipal railway aid bond cases referred to in a subsequent chapter,[2] have held the doctrine, in favor of the innocent holders for value of such securities, that the *municipality may be estopped by recitals in the bonds*, by the subsequent levy of taxes to pay interest thereon, and by retaining the stock which was received in exchange for the bonds or purchased with their proceeds, to set up in defence a non-compliance with preliminary conditions.[3] This is a doctrine, however, which is asserted for the protection of such holders, and has ordinarily no place in controversies which arise *before the issue of the bonds*, between the taxpayers or municipality on the one hand, and the company on the other. In such cases the sound doctrine is that compliance with all substantial or material conditions is essential.[4]

[1] Harding *v.* Rockford, &c. Railroad Co., 65 Ill. 90 (1873).

In delivering the opinion of the court, *Thornton*, J., remarks: "Such municipalities were not created with the view to engage in commerce, or to aid in the construction of railways, but for governmental purposes only. When they exercise the functions given by the statutes under consideration, the powers granted must not only be clearly conferred, but strictly pursued. If the mode prescribed for carrying into effect the right to issue bonds is not complied with in all material matters, then the bonds should not be issued, and thus the taxpayer will be exempt from the imposition of illegal taxes, and a grievous burden upon his property. These principles have been so elaborately discussed and fully settled by this court, that we need only refer to some of the cases. The People *v.* Tazwell County, 22 Ill. 147; Fulton County *v.* The Mississippi & Wabash Railroad Co., 21 Ill. 338; Middleport *v.* Ætna Life Ins. Co., 82 Ill. 562; People *v.* Logan Co., 63 Ill. 384; Williams *v.* Roberts, 88 Ill. 11; People *v.* Oldtown, 88 Ill. 202; Clarke *v.* Board, &c., 27 Ill. 307; Force *v.* Batavia, 61 Ill. 99; Harding *v.* R. R. I. & St. L. R. R. Co., 65 Ill. 90; Lippincott *v.* Pana, 92 Ill. 24; Gaddis *v.* Richland Co., 92 Ill. 119; Supervisors of Schuyler Co. *v.* The People, 25 Ill. 181; Supervisors of Hancock County *v.* Clark, 27 Ill. 305; Marshall County *v.* Cook, 38 Ill. 44; Wiley *v.* The Town of Brimfield, 59 Ill. 306; People *v.* Cass Co., 77 Ill. 438 (1875)."

If aid has been conditionally voted, the condition must be complied with before the company can demand the aid. Railroad Co. *v.* Hartford, 58 Me. 23; Cowdrey *v.* Town of Canadea, 16 Fed. Rep. 532; Rich *v.* Town of Mentz, 19 Fed. Rep. 725.

[2] *Post*, chap. xiv. on Contracts, sec. 511 *et seq.*

[3] *Post*, sec. 519 *et seq.*

[4] Jackson Co. *v.* Brush, 77 Ill. 59 (1875).

The Supreme Court of Connecticut, under peculiar circumstances, held the town voting aid to a railroad company *estopped* to show, as against the *railroad company* (equitable rights of material-men and contractors having intervened), that

the vote at the town meeting had not been taken by ballot as required by the act of the legislature, but by a division of the house, without ballot. New Haven, &c. Railroad Co. *v.* Chatham, 42 Conn. 465 (1875). This case pronounced exceptional, Bloomfield *v.* Charter Oak Bank, 121 U. S. 121, citing the foregoing. See also Douglas *v.* Chatham, 41 Conn. 211. In submitting the question to vote whether a township will take stock in a railroad company, the township has the right to impose such conditions in regard thereto as it deems proper; and such conditions when imposed are binding, and the company will have no right to the subscription, or to compel the issue of the bonds, until the conditions are fully performed on its part, if the authorities have a discretion. People *v.* Holden, 91 Ill. 446. If the county authorities have a discretion to subscribe on a vote without conditions, the annexing of conditions will not deprive them of its exercise. People, *ex rel.*, &c. *v.* County Board of Cass County, 77 Ill. 438 (1875).

Except in controversies with *bona fide bondholders for value, the State courts have generally and properly, held*, that the power of a municipality to issue railroad aid bonds is dependent upon a strict compliance with the statute authorizing the issue of such bonds; and that when the power is conditional on a prior vote of the electors the statutory notice must be given. People *v.* Jackson County, 92 Ill. 444; Harding *v.* R. R. I. & St. L. R. R. Co., 65 Ill. 90 (1872); People *v.* Waynesville, 88 Ill. 469, in which it is held that one submission exhausts the power, and a subsequent one is *ultra vires: quære.* A subscription cannot be made to a *division* of a road. McWhorter *v.* People, 65 Ill. 290 (1872). *Power to issue upon compliance with conditions cannot be delegated.* Jackson County *v.* Brush, 77 Ill. 59 (1875); People *v.* Waynesville, *supra;* People *v.* Harper (vote need not fix time for bonds to run), 67 Ill. 62 (1873). *Cannot make a contract with railroad company for subscription before election.* People *v.* Cass County, 77 Ill. 438 (1875). *Submitting two propositions at same election.* Marshall *v.* Silliman, 61 Ill. 218 (1871); see also Garrigus *v.* Park County, 39 Ind. 66 (1872); State *v.* Roggen, 22 Neb. 118. Conditions, effect of non-observance. Alley *v.* Adam County, 76 Ill. 101 (1875). *Voting on unauthorized proposition.* Cairo, &c. Co. *v.* Sparta, 77 Ill. 505 (1875). *Election must be held according to the law governing it.* The People, &c. *v.* Supervisor, &c., 67 Ill. 57 (1873). See also the following cases: Wright *v.* Bishop, 88 Ill. 302; Edwards *v.* People, 88 Ill. 340; Williams *v.* Roberts, 88 Ill. 11; People *v.* Clayton, 88 Ill. 45; People *v.* Oldtown, 88 Ill. 202; Yarish *v.* R. R. Co., 72 Iowa, 556. *What is a majority vote.* McDowell *v.* Const. Co., 96 N. C. 514; State *v.* Bechell, 22 Neb. 158; *ante*, sec. 44, note and cases.

The reader is referred to chap. xiv. on Contracts, *post*, where the subject of *Municipal Bonds* is considered at large, with special reference to the decisions of the Supreme Court of the United States, which, generally speaking, are more favorable on certain points to the *bona fide* holders of such bonds than those of the State courts.

CHAPTER VII.

DISSOLUTION OF MUNICIPAL CORPORATIONS AND REPEAL OF CHARTERS.

In England.

§ 165 (109). **How dissolved.** — In England, a municipal corporation may be dissolved, —

1. By *an act of parliament*, this power being a necessary consequence of the omnipotence of that body in all matters of political institution.[1] The *king* may, by his prerogative, *create, but cannot dissolve or destroy* a corporation; may grant privileges, but when vested, cannot take them away.[2]

It has there often been declared that a municipal corporation may also be dissolved, —

2. By *the loss of an integral part*, or the loss of all or of the majority of the members of any integral part, without which it cannot transact its business, unless the parts that remain have the right to act or to restore the corporate succession.[3]

[1] Co. Litt. 176, note; 2 Kyd, 447; Rex *v.* Amery, 2 Term R. 515; Glover, 408; Angell & Ames, chap. xxii. sec. 767; 2 Kent Com. 305; County Comm'rs *v.* Cox, 6 Ind. 403; State *v.* Trustees, &c., 5 Ind. 77; *ante*, sec. 32, as to distinction between Royal and Parliamentary Corporations.

[2] *Ante*, secs. 32, 35; Rex *v.* Amery, *supra;* Regents of University *v.* Williams, 9 Gill & Johns. 365, 409 (1838). In this case, *Buchanan*, J., in substance, observes: The crown may create, but cannot, at pleasure, dissolve a corporation, or, without its consent, alter or amend its charter. Parliament may do this; but, restrained by public opinion, it has not undertaken to dissolve any private corporation since the time of Henry VIII., so that the power to do so rests wholly in theory. In 1783 a bill was proposed to remodel the East India Company. Lord *Thurlow* opposed it as subversive of the law and constitution, and, in strong, nervous language, declared it to be "an atrocious violation of private property, which cut every Englishman to the bone."

[3] Willc. on Corp. 325, chap. vii. This chapter contains an interesting discussion of the question of dissolution, and it would seem that the author, notwithstanding the occasional judgments and the many and broad *dicta* in the books, doubts whether there can be an *actual and total dissolution* of a municipal corporation, either by the loss of an integral part, or by surrender, or by forfeiture. But see 2 Kyd, chap. v.; Glover, chap. xx.; Angell & Ames, sec. 769; and particularly Rex *v.* Morris and Rex *v.* Stewart, 3 East, 213; 4 East, 17. *Integral parts defined. Ante*, sec. 35. In Rex *v.* Passmore, 3 Term R. 241, where the subject was much considered, Lord *Kenyon* observed, "When *an integral part of a corporation is gone*, without whose existence the functions of the corporation cannot be exercised, and the corporation has no manner of supplying the integral