§ 251 (189). **Incidental Power to remove for Cause; Rex v. Richardson.** — In the *leading case of The King* v. *Richardson*, the point was decided, as above mentioned, that a corporation, in the absence of an express grant of authority, had the *incidental power* to make a by-law to remove officers for *just cause*. Lord Mansfield in that case classified the offences which would justify the exercise of the power; and his judgment therein has been followed both in England and in this country, in cases arising in private corporations not of a pecuniary character. According to Lord Mansfield, there are three sorts of offences for which an officer or corporator may be discharged: 1. Such as have *no immediate relation to his office*, but are themselves of so *infamous* a nature as to render the offender unfit to execute any public franchise. 2. Such as are only against his oath and *the duty of his office as a corporator*, and amount to breaches of the tacit condition annexed to his franchise or office. 3. Offences of a *mixed nature*, — as being an offence not only against the duty of his office, but also a matter indictable at the common law.[1] In offences of the *first* class the removal can only

dover, 1 Ld. Raym. 710; Page *v.* Hardin, 8 B. Mon. 648; Hoboken *v.* Gear, 3 Dutch. (N. J.) 265; Madison *v.* Korbly, 32 Ind. 74 (1869); Stadler *v.* Detroit, 13 Mich. 346 (1865). Charter power of removal, without cause, at any time, of a police patrol appointed for a year, see Chicago *v.* Edwards, 58 Ill. 252 (1871). As to the *removal*, by the appointing power, of officers, the duration of whose term is not fixed, see People *v.* Comptroller, &c., 20 Wend. (N. Y.) 595; Commonwealth *v.* Sutherland, 3 Serg. & Rawle (Pa.), 145; Field *v.* Girard College, 54 Pa. St. 233; State *v.* Doherty, 25 La. An. 119 (1873); s. c. 13 Am. Rep. 131; State *v.* St. Louis, 90 Mo. 19; People *v.* Nichols, 79 N. Y. 582. A resolution to "*dispense with the services*" of an officer, passed by a council having power to remove him at its pleasure, was held to be a removal in State *v.* Sohn, 97 Ind. 101. Where *express power* is given by statute to the *mayor to remove an officer at his pleasure*, it seems to be clear that the mayor is the exclusive judge of the propriety of exercising the power. People *v.* New York, 82 N. Y. 491. The mayor of a city held to have no power to suspend the fire-engineer duly appointed by the mayor with the advice and consent of the council, and declare vacancy, and appoint another person in his place. State *v.* Bryson, 44 Ohio St. 457; State *v.* Hudson, 44 Ohio St. 137. Power to remove officers under a special statute and charter provision, see Ham *v.* Police Board, 142 Mass. 90; New Brunswick *v.* Fitzgerald, 48 N. J. L. 457.

It is the law in England, as applied to the old corporations, that causes which *disqualify* the person to be an officer will not authorize the corporation to amove him, but he must be ousted by *quo warranto*. The reason given is that one so disqualified is not, in law, a corporate officer, and hence cannot be amoved as such by the corporation. Rex *v.* Doncaster, Say. 40; Buller N. P. 203; Rex *v.* Lyme Regis, Doug. 85; Symmers *v.* Regem, Cowp. 502; Willc. 259, pl. 669; Willc. 281, pl. 728. And see Fawcett *v.* Charles, 13 Wend. 473 (1835). It has elsewhere been shown (*ante*, sec. 200 *et seq.*) that with us the councils of municipal corporations are often made judges of the qualifications of their members and officers, and this may modify or change the rule above mentioned, which seems to rest on narrow and technical grounds.

[1] Rex *v.* Richardson, 1 Burr. 517, 538, (1758); followed, Rex *v.* Liverpool, 2

be made *after* there has been a previous conviction in a court of law; and an amotion will not be sustained by a subsequent conviction.[1] In offences of the *second* class the corporation may *try*, and if the charge is established, remove, without any previous or other proceeding in the courts.[2] In offences of the *third* class the English judges have differed on the point whether the officer may or may not be removed before a conviction in a court of justice. The principal cases and the result on this point are briefly stated in the note.[3]

Burr. 723; *supra*, sec. 240. So, also, in Commonwealth *v.* St. Patrick's (Benevolent) Society, 2 Binn. (Pa.) 441 (1810); Commonwealth *v.* Guardians, &c., 6 Serg. & Rawle (Pa.), 469 (1821). These cases adopt Lord *Mansfield's* classification, and assert the inherent power of corporations to expel for offences falling within any of the three classes. See, also, Butch. Benef. Assoc. 35 Pa. St. 151; 38 Pa. St. 298; Evans *v.* Philadelphia Club, 50 Pa. St. 107; Society, &c. *v.* Commonwealth, 52 Pa. St. 125.

The courts in a proper case may, by *mandamus*, compel a corporation to amove an officer; and the result of the English cases on this point is considered to be that where the offence of the officer is such that the corporation has the *power* to amove, the court will only compel it to do so where some one is injured by the omission to remove; but where it is *required* to amove, or the office is declared by the charter or statute to be void if such an act be done or omitted, there the court will compel it to amove, though no one be shown to have been aggrieved. Rex *v.* Truro, 3 Barn. & Ald. 592; Rex *v.* West Looe, 5 Dowl. & R. 416; Rex *v.* Totness, 5 Dowl. & R. 483; Grant on Corp. 243, and note.

[1] Rex *v.* Richardson, *supra*, and cases cited in last note.

[2] Rex *v.* Richardson, *supra;* Commonwealth *v.* St. Patrick's Society, *supra*, and cases cited in last note but one.

[3] Rex *v.* Carlisle, Fortesc. 200; s. c. 11 Mod. 379. In this case the corporation, before conviction, amoved a capital citizen for giving a bribe to a freeman, and offering him another to influence his vote at the election for a mayor. The court's judgment was in favor of the right to amove. Although there might have been a previous conviction, yet this being a great offence against the *duty of his office*, the corporation might amove without a conviction. In Rex *v.* Derby, Cas. temp. Hardw. 155, Lord *Hardwicke* mistook the above case on this point, and inclined to think there ought to be a previous conviction. And such seemed also to be the inclination of *Holt*, C. J., in Rex *v.* Chalke, Comb. 397, where the removal was before conviction, for criminally razing entries in the corporation books which were at first proper, but the point was not decided. In Haddock's Case, T. Raym. 439, the amotion was for riotously assembling and assaulting several corporators, thereby impeding the business of the corporation. It was considered that the offence was two-fold, — one against the duty of his office as a corporator, the other (wholly disconnected) of a riot. And as he might be guilty of one and yet be acquitted of the other, the corporation might amove without conviction; and the case is said to be different from that of Chalke (*supra*), for there the officer could not have been guilty of the offence at law without at the same time having been guilty of a breach of his duty. The cases decided are considered to favor this view, viz., if the act is criminal and single in its nature, so that a conviction or acquittal in the courts of law will necessarily determine the guilt or innocence of the party, there must be a conviction, but otherwise there may be a removal without, or independent of, a conviction. Buller's N. P. 206; Willc. 249–252; Glover, 331, 338; Grant, 240; 2 Kyd, 88–94, where the prior cases are digested and stated. Lord *Mansfield*, in Rex *v.* Richardson, 1 Burr. 538, leaves the point

§ 252 (190). **Scope of implied Power of Removal.** — Principle and sound policy require that the *implied power of removal* for offences against the corporation be restricted to acts of a serious nature directly affecting the rights and interests of the corporation.[1] Causes for removal have, in some instances, been held sufficient in England which would not probably be so regarded in this country. The principal English cases are given in the note. The sufficiency and reasonableness of the cause of removal are questions for the courts.[2]

untouched. A removal for a riot in the council-chamber, without a previous conviction, is said to have been held good. Rex *v.* Yates, Stiles, cited 8 Mod. 101. See, further, Earle's Case, Carth. 173; Rex *v.* Wells, 4 Burr. 1999; Regina *v.* Newberry, 1 Q. B. 751; 2 Bac. Abr. (Bouv. ed.) 476, and cases cited.

[1] Evans *v.* Philadelphia Club, 50 Pa. St. 107; Butch. B. Assoc., 35 Pa. St. 151; 38 Pa. St. 298; Society, &c. *v.* Commonwealth, 52 Pa. St. 125; Commonwealth *v.* Philanthropic Society, 5 Binn. (Pa.) 486; State *v.* Common Council, 9 Wis. 254; Mayor, &c. *v.* Geisel, 19 Ind. 344; Same *v.* Wright, 19 Ind. 346.

[2] Rex *v.* Andover, 3 Salk. 229. *Poverty* of alderman, so that he could not *pay taxes*, sufficient cause for amoving him. *Ib.* But not applicable here. But *bankruptcy* insufficient cause of amotion of councilman. Rex *v.* Liverpool, 2 Burr. 723; see Rex. *v.* Chitty, 5 Ad. & E. 609. *Total desertion of duties* of office sufficient cause. Buller's N. P. 206; Rex *v.* Richardson, 1 Burr. 541. *When absence and non-attendance* upon meetings, and *neglect of duty*, will be sufficient cause. See Rex *v.* Richardson, *supra;* Rex *v.* Wells, 4 Burr. 2004; 1 Hawk. P. C. chap. lxvi. sec. 1, as to official neglect of duty; approved by Lord *Mansfield*, in case last cited; Lord Bruce's Case, 2 Stra. 819, and notes; Reg. *v.* Ipswich, 2 Ld. Raym, 1233; s. c. Salk. 443; Buller's N. P. 206, 207; Lord Hawley's Case, 1 Vent. 146; Rex *v.* Harris, 1 Barn. & Ad. 936; Queen *v.* Mayor, &c., of Pomfret, 10 Mod. 107; 2 Kyd, 65 *et seq.*, where the older cases are stated. Willc. 255–264; Angell & Ames, sec. 427, giving summary of English cases. Much depends upon the cause of the neglect, and whether the effect is to obstruct or hinder the business of the corporation or officer from being done.

Habitual drunkenness, disqualifying from the performance of duty, is a sufficient cause to remove an alderman or officer charged with magisterial functions. Rex *v.* Taylor, 3 Salk. 231; 1 Rolle, 409; 3 Bulst. 190. But *casual intoxication*, or bring drunk by accident, is not a sufficient cause, for the reason (charitably allowed) that this is likely to happen to the best. Rex *v.* Taylor, *supra*, A. D. 1616. *Old age* is insufficient. Bac. Abr. Corp. E. 9; Hazard's Case, 2 Rolle, 11.

Mere threats or *attempts*, no injury resulting, not sufficient. Bagg's Case, 11 Coke, 93. *Insulting language*, or *libel* upon mayor or officers, held insufficient, on the ground that personal offences are to be punished by law, and not by the corporation. Rex *v.* Oxford, Palm. 455; Bagg's Case, 11 Coke, 93, 96, 97, 98, 99; Clerk's Case, 2 Cro. 506; Buller's N. P. 203; Reg. *v.* Lane, Fortesc. 275; s. c. 11 Mod. 270; Earle's Case, Carth. 174; Willc. 261, pl. 680. See Regina *v.* Rogers, 2 Ld. Raym. 777; Innes *v.* Wylie, 1 Carr. & K. 257; Regina *v.* Treasury, 10 Ad. & E. 374; 2 Perr. & D. 498.

Official misconduct, amounting to misdemeanor, has been before mentioned, and the cases cited. The misconduct must, it seems, specially relate to the execution of the office. Rex *v.* Wells, 4 Burr. 1999; see Regina *v.* Newberry, 1 Q. B. 751. If the same person hold *two offices*, misconduct with respect to one will authorize removal from that one, but not from both; but if the offence is against the duties of both, the removal may be from both. Rex *v.* Chalke, 1 Ld. Raym. 226; s. c. 5 Mod. 257; Rex *v.* Doncaster, 2 Ld. Raym. 1566; s. c. 1 Barnard. 265; Rex *v.* Wells,

§ 253 (191). **Proceedings to amove.** — Respecting the *proceedings to amove*, it has already been observed that they must be had by and before the *authorized body duly assembled*, in conformity with the rules on that subject, which are elsewhere stated.[1] The proceeding in all cases *where the amotion is for cause is adversary or judicial in its character;* and if the organic law of the corporation is silent as to the mode of procedure, the substantial principles of the common law as to proceedings affecting private rights must be observed.[2]

§ 254 (192). **Notice of Proceeding to amove.** — And *first*, the officer is entitled to a *personal notice* of the proceeding against him,

4 Burr. 1999; Rex *v.* Harris, 1 B. & Ad. 936. Misemployment of corporate funds in his custody is not sufficient cause of amotion, though generally it is good cause of suspension from a financial office; for the court will not grant a *mandamus* to restore until the accounts are made up and submitted to the corporation. Rex *v.* Chalke, 1 Ld. Raym. 226; s. c. 5 Mod. 259; Rex *v.* London, 2 Term R. 182; Willc. 262, pl. 685; Angell & Ames, sec. 428. On principle, it may be suggested that if an implied power of amotion exists at all, it should extend to a case where the financial officer of a corporation is misemploying its funds entrusted to his safe keeping.

[1] Rex *v.* Taylor, 3 Salk. 231; Rex *v.* Sandys, 2 Barnard. 302; Taylor *v.* Gloucester, 1 Roll. 409; s. c. 3 Bulst. 190; Rex *v.* Chalke, 1 Ld. Raym. 226; 2 Kyd. 57; Grant, 245, 275; Willc. 264, pl. 691; Willc. 266, pl. 698. Necessity for vote or corporate act, declaring the removal or expulsion. Commonwealth *v.* Pennsylvania, &c. Institute, 2 Serg. & Rawle (Pa.), 141; Commonwealth *v.* German Society, 15 Pa. St. 251; Stadler *v.* Detroit, 13 Mich. 346. Where the ordinance creating an office expressly reserves to the city council the power to remove the incumbent at pleasure, the repeal of the ordinance and notice to him of the repeal operate as a removal. Chandler *v.* Lawrence, 128 Mass. 213.

Where, by statute, the mayor, recorder, and an alderman were constituted a body to try charges against policemen appointed by the corporation, with power to suspend or remove, the presence of the mayor is essential to the constitution of the legal body, and if one act in the trial of such a charge as mayor, who is not such *de jure* [or *de facto*], the order of removal is void. Hadley *v.* Mayor, &c., 33 N. Y. 603; see *supra*, sec. 244. Special provision of charter construed to give the power of removal to the mayor and council, and not to the council alone. Charles *v.* Hoboken, 3 Dutch. (N. J.) 203. Andrews *v.* King, 77 Me. 224, where the officer was "subject after hearing to removal by the mayor, by and with the advice and consent of the aldermen," it being held that the hearing should have been by the "board of mayor and aldermen;" a hearing by the aldermen alone being held insufficient though the officer had consented to it. In this case it was also held that the mayor and aldermen should first find as a fact, and adjudicate, that sufficient cause for removal existed, before a valid order of removal could be made.

[2] State *v.* Bryce, 7 Ohio, part II. [82], 414, 416 (1836). "This proceeding," (amoval of a trustee of the university) "is essentially adversary; the justice of the common law permits no investigation of facts which may be followed by a loss of a right or by the infliction of a penalty, to be conducted *ex parte.*" *Ib.*, *per Lane*, J., Murdock *v.* Academy, 12 Pick. 244; State *v.* Trustees, &c., 5 Ind. 77. Charter mode, if prescribed, must be pursued. *Ib.;* Bacher's Case, 20 Pa. St. 425; see People *v.* Bearfield, 35 Barb. (N. Y.) 254; State *v.* Common Council, 9 Wis. 254; Madison *v.* Korbly, 32 Ind. 74; Tompert *v.* Lithgow, 1 Bush, (Ky.) 176 (1866).

and of the time when the trial body will meet. It is not necessary that the notice, citation, or summons set out the charges in detail, but it should contain the substantial fact that a proceeding to amove is intended.[1] The analogies of the ordinary procedure in the courts of the State (in the absence of statute or by-law) may be followed, respecting such details as the notice or summons, mode of service, &c. *Notice may be dispensed with:* 1. By appearance and answer to the charges.[2] 2. By a total desertion of the place,[3] so that it is not practicable to give the notice; as where the officer has permanently, not temporarily, left the municipality and resides constantly elsewhere with his family. Though he may have been absent or left the borough, yet if he return and be in the place at the time of the amotion, he is entitled to notice.[4] If the amotion be for good cause, such as conviction of an infamous crime,[5] or the repeated declaration of the officer that he would not discharge the duties of his office,[6] while it would be more regular to give the notice, yet its omission will not entitle him to a *mandamus* to be restored; for if restored he could be amoved again, and the courts will not order a restoration where they can see that there is good ground of removal, and that the order to restore would be without practical and useful effect.[7] With these exceptions, the party is entitled to no-

[1] Queen *v.* Saddlers' Co., 10 House of Lords Cases, 404; State *v.* Bryce, *supra;* Rex *v.* Richardson, 1 Burr. 540; Rex *v.* Doncaster, 2 Burr. 738; see 1 B. & Ad. 942; Rex *v.* Liverpool, 2 Burr. 731; Bagg's Case, 11 Rep. 99 *a;* Rex *v.* Wilton, 5 Mod. 259; Exeter *v.* Glyde, 4 Mod. 37; Reg. *v.* Ipswich, 2 Ld. Raym. 1240; Willc. 264, 265; Innes *v.* Wylie, 1 C. & K. 257; South P. R. Co., 5 Ind. 165; People *v.* Benevolent Society, 24 How. Pr. 216; Delacey *v.* Neuse, &c. Co., 1 Hawks (N. C.), 274; Commonwealth *v.* Pennsylvania Benef. Institute, 2 Serg. & Rawle (Pa.), 141; Society *v.* Vandyke, 2 Whart. (Pa.) 309; Nichols, *In re*, 6 Abb. New Cas. 474; s. c. 57 How. Pr. 395; People, *ex rel.* *v.* Commissioners, &c., of Brooklyn, 106 N. Y. 64; People *v.* Nichols, 79 N. Y. 582. Where the power of removal is vested in the mayor for cause, he acts judicially, and a writ of prohibition will lie against him, if he exceeds his jurisdiction. People *v.* Cooper, 57 How. Pr. 416. If the incumbent of an office uses the office as a means of wrong-doing, this is a good cause of removal, though the acts in question are not of an official nature. *Ib.* Where power is given to remove for cause, a specification of the charges, notice, and an opportunity to be heard, are essential, though the charter be silent as to the procedure to be adopted in such a case. State *v.* St. Louis, 90 Mo. 19.

[2] Willc. 264; Rex *v.* Wilton, 2 Salk. 428; Reg. *v.* Ipswich, 2 Ld. Raym. 1240; Rex *v.* Feversham, 8 Term R. 356; Rex *v.* Carmathen, 1 Maule & Sel. 697; s. P. Commonwealth *v.* Pennsylvania Benef. Institute, 2 Serg. & Rawle, 141.

[3] Willc. 265, 266; Grant, 245; Rex *v.* Harris, 1 B. & Ad. 936; Rex *v.* Shrewsbury, Cases temp. Hardw. 151; 7 Mod. 202; Reg. *v.* Trueboy, 2 Ld. Raym. 1275; 11 Mod. 75; Rex *v.* Grimes, 5 Burr. 2601; Rex *v.* Leicester, 4 Burr. 2089.

[4] Rex *v.* Leicester, 4 Burr. 2089.

[5] Angell & Ames Corp. sec. 422, where this opinion is expressed; Grant, 265; Rex *v.* Chalke, 1 Ld. Raym. 226.

[6] Rex *v.* Axbridge, Cowp. 523; see 2 Term R. 182; Grant Corp. 245.

[7] Rex *v.* Griffiths, 5 B. & Ald. 735; see Blagrave's Case, 2 Sid. 6, 49, 72; Rex

tice of the intention to amove, so that he may have full and fair opportunity to be heard in his defence.

§ 255 (193). **The Charges must be formulated: Opportunity to defend.** — There must be *a charge*, or charges, against him, *specifically stated*, with substantial certainty; yet the technical nicety required in indictments is not necessary.[1] And *reasonable time and opportunity must be given to answer* the charges and to produce his testimony; and he is also entitled to be heard and defended by counsel, and to cross-examine the witnesses, and to except to the proofs against him.[2] If the charge be not denied, still it must, if not admitted, be examined and proved.[3] Where the specific charge stated is insufficient to justify the removal, or where the removal is erroneous and no good and sufficient ground therefor appears, the officer is entitled to a *mandamus to restore him.*[4] But where the proceedings are in conformity with the charter, and are regular, the sentence will not be inquired into collaterally, nor its merits examined by *mandamus* or action.[5]

v. Rowe, 1 Show. 188; s. c. Carth. 199; Grant, Corp. 245. If one irregularly amoved for good cause be restored by *mandamus*, he may be again amoved by regular proceedings *de novo.* Taylor *v.* Gloucester, 3 Bulst. 190; Reg. *v.* Ipswich, 2 Ld. Raym. 1233. In such case the office is vacated from the time of the second amotion; the proceedings do not relate back to the former irregular amotion. Willc. 269, pl. 707.

[1] Tompert *v.* Lithgow, 1 Bush (Ky.), 176 (1866); Rex *v.* Lyme Regis, Doug. 179; Bagg's Case, 11 Co. 99 *a;* s. c. 1 Roll. 225; Glover, 334; Willc. 267.

[2] State *v.* Bryce, 7 Ohio, part II. [82], 414 (1836); Rex *v.* Richardson, 1 Burr. 540; Rex *v.* Liverpool, 2 Burr. 734; Murdock *v.* Academy, 12 Pick. (Mass.) 244, where the requisites of a valid proceeding to amove are stated. Rex *v.* Chalke, 1 Ld. Raym. 226; Rex *v.* Derby, Cas. Temp. Hardw. 154. *Ante*, sec. 254, note.

[3] Rex *v.* Faversham, 8 Term R. 356; Harman *v.* Tappenden, 1 East, 562; Willc. 267; Glover, 334; Murdock *v.* Academy, 12 Pick. (Mass.) 244. A municipal officer, when removed by the corporation appointing him, is entitled to actual notice of his removal, and to compensation until he receives such notice. Jarvis *v.* Mayor, &c. of New York, 2 N. Y. Leg. Obs. 396.

[4] Reg. *v.* Ipswich, 2 Ld. Raym. 1240; Madison *v.* Korbly, 32 Ind. 74 (1869); Commonwealth *v.* German Society, 15 Pa. St. 251 (1850); State *v.* Jersey City, 1 Dutch. (N. J.) 536. The restoration puts him in the same situation that he was before the attempted removal. Willc. 269; *post*, sec. 847. Since there is an adequate remedy at law by *quo warranto* (*post*, chap. xxi.) or by *mandamus* to restore (*post* sec. 847), *equity, will not enjoin* the corporate authorities from making an unlawful removal or appointing a successor. Delahanty *v.* Warner, 75 Ill. 185 (1874); s. c. 20 Am. Rep. 237. *Post*, sec. 275. Under the statute of *Florida* the action of a council in amoving an officer is reviewable by *mandamus*, and in that proceeding the court will review all the action of the council and the testimony adduced before it. Donnelly *v.* Teasdale, 21 Fla. 652.

[5] Society, &c. *v.* Commonwealth, 52 Pa. St. 125 (1866); People *v.* Bearfield, 35 Barb. (N. Y.) 254. Though the amotion be illegal, the officers who took part in it are not *personally liable*, unless both malice and want of probable cause be

§ 256 (194). **Effect of Valid Amotion; Vacancy.** — If the amotion be *legal and authorized*, the office becomes *ipso facto vacant* from the time the amotion is declared, and another person may be elected or appointed to fill it. If the removed officer afterward continues to act, he is a mere usurper, and may be ousted on *quo warranto* and punished. Amotion from one office does not, of course, affect the party's title to another.[1]

shown. Harman *v.* Tappenden, 3 Espin. 278; s. c. 1 East, 555; Ferguson *v.* Earl of Kinnoul, 9 Cl. & F. 289.

Jurisdiction as to the *election* and *amotion* of officers in corporations, when not changed by statute *belongs to the common-law courts and not to equity.* Attorney-General *v.* Earl Clarendon, 17 Ves. 491; Dyer, 332; Cochran *v.* McCleary, 22 Iowa, 75. See, also, *In re* Sawyer, 124 U. S. 200 (1887); *ante*, secs. 202, note, 204, note, 275, and note. Where, by charter, a city council had power to remove police officers, and the mayor had power also to increase or diminish their number at discretion, it was held, in an action brought by a policeman, removed by the mayor for malfeasance, for his salary, that in the former case the judgment of the council, being judicial, was conclusive, while the action of the mayor, being ministerial, was not conclusive upon the officer. Oliver *v.* Americus, 69 Ga. 165; *ante*, sec. 202; *post*, sec. 275.

[1] Jay's Case, 1 Vent. 302; Symmers *v.* Regem, Cowp. 503; Willc. 268, pl. 704; Rex *v.* Doncaster, 2 Ld. Raym. 1566; 1 Barnard. 265; Rex *v.* Chalke, 1 Ld. Raym. 226. Mr. Willcock, 267, pl. 704, whose language is adopted by Glover (Corp. 334), states that if a person legally amoved continues to act, he is a mere usurper, and that "all corporate acts in which he has concurred are equally void, as though he had never been elected or admitted." But if he is permitted to act after amotion, it would probably be considered, in this country, that his acts would, as to third persons, be valid, like those of an officer *de facto.* If the removal be unauthorized, Mr. Willcock states the rule to be, "That all corporate acts in which he has concurred between the moment of his removal and restitution are of equal validity as if he had never been amoved," &c. Willc. 269, pl. 707. If he was regularly present and concurred, it can well be seen how this should be so; but his concurrence when not regularly acting, or when a *de facto* successor has taken his place and is acting, would not seem to alter the legal quality of the act. In this country *the acts of a de facto officer* of a *de jure* office are everywhere considered valid as respects the public. *Ante*, secs. 215, note, 221, note, 230, note, 235, note, 237, note. *Post*, secs. 276, 892, note; Cushing *v.* Frankfort, 57 Me. 541.

CHAPTER X.

CORPORATE MEETINGS.

§ 257 (195). **Subject outlined.** — The *subject of Corporate Meetings* will be considered under the following general heads: —

1. Common Law Requisites of a Valid Corporate Meeting — secs. 258–261.
2. Notice of Corporate Meetings at Common Law and under the English Municipal Corporations Act — secs. 262–265.
3. New England Town Meetings; Requisites of Notice and Power of Adjournment — secs. 266–269.
4. Constitution and Meetings of Councils, or of Select Governing Bodies, and herein of Quorums and Majorities; of Integral Parts; and of Stated, Special, and Adjourned Meetings — secs. 270–287.
5. Mode of Proceeding when convened — secs. 288–292.

§ 258 (196). **Common-Law Requisites of a Valid Corporate Meeting.** — As respects *their mode of action*, municipal corporations in this country are of *two general classes.* In the one, as in the organization of *towns* in the New England States, heretofore adverted to, *all of the qualified inhabitants* meet, act, and vote, *in person.*[1] In the other, which is the kind that prevails generally throughout the States, and even in many of the larger places in New England, the affairs of the town or city are administered by a *select or representative body*, usually denominated the council, and which is elected by the qualified voters of the incorporated place, not assembled together in a meeting, but at an election, where each elector votes separately and by ballot.[2]

§ 259 (197). **Corporate Meetings.** — The *latter class* of corporations is properly municipal. The *former class* is not so strictly municipal as it is public in its character.[3] Where there is a *council* or *governing body*, the inhabitants or voters, in their natural capacity, have no power to act for or to bind the corporation, but the corpora-

[1] *Ante*, chap. ii. sec. 28.

[2] *Ante*, chap. ii. sec. 28 *et seq.*; chap. ix. sec. 194 *et seq.*

[3] *Ante*, chap. i. sec. 9; chap. ii. secs. 22, 23, and note.