

LECTURE XXXIII.
OF CORPORATIONS.

1. *What is a corporation?*—267.

A corporation is a franchise possessed by one or more individuals, who subsist as a body politic, under a special denomination, and are vested, by the policy of the law, with the capacity of perpetual succession, and of acting in several respects, however numerous the association may be, as a single individual.

2. *What is the object of this institution?*—267.

To enable the members to act by one united will, and to continue their joint powers and property in the same body, undisturbed by the change of members, and without the necessity of perpetual conveyances, as the rights of members pass from one individual to another. All the individuals composing a corporation, and their successors, are considered in law but as one moral person, capable, under an artificial form, of taking and conveying property, contracting debts and duties, and of enjoying a variety of political and civil rights. One of the peculiar properties of a corporation, is the power of perpetual succession; for, in judgment of law, it is capable of indefinite duration. The rights and privileges of a corporation do not determine, or vary, upon the death or change of any individual members. They continue as long as the corporation endures.

3. *What is meant by saying that a corporation is immortal?*—268.

The immortality of a corporation means only its capacity to take in perpetual succession so long as the corporation exists. It is so far from being immortal, that it is well known that most of the private corporations recently created, by statute are limited in duration to a few years. There are many corporate bodies that are without limitation, and consequently capable of continuing so long as a succession of individual members of the corporation remains and can be kept up.

4. *For what purpose were corporations invented?*—268.

It was chiefly for the purpose of clothing bodies of men in succession, with the qualities and capacities of one single, artificial, and fictitious being, that they were originally invented, and, for the same convenient purpose, they have been brought largely into use. By means of the corporation, many individuals are capable of acting in perpetual succession like one single individual, without incurring any personal hazard or responsibility, or exposing any other property than what belongs to the corporation in its legal capacity.

5. *How far back may we trace the history of corporations?*—268, 269.

They were well known to the Roman law, and they existed from the earliest periods of the Roman republic. It would appear from a passage in the Pandects, that they were copied from the laws of Solon, who permitted private companies to institute themselves at pleasure, provided they did nothing contrary to public law. But the Romans were not so indulgent as the Greeks. They were very jealous of such combinations of individuals, and they restrained those that were not specially authorized; and every corporation was illicit that was not ordained by the decree of the senate or of the emperor. In the age of Augustus, as we are informed by Suetonius, certain corporations had become nurseries of faction and disorder, and that emperor interposed, as Julius Cæsar had done before him, and dissolved all but ancient and legal corporations. We find, also, in the younger Pliny, a singular instance of the extreme jealousy indulged by the Roman government of these corporations. A destructive fire in Nicomedia induced Pliny to recommend to the Emperor Trajan the institution, for that city, of a fire company of one hundred and fifty men (*collegium fabrorum*), with an assurance than none but those of that business should be admitted into it, and that the privileges granted them should be extended to no other purpose. But the emperor refused the grant, and observed, that societies of that sort had greatly disturbed the peace of the cities; and that whatever name he gave them, and for whatever purpose they might be instituted, they would not fail to be mischievous.

6. *What do the powers, capacities, and incapacities of corporations, considered under the English law, resemble?*—269.

They very much resemble those under the civil law; and it is evident that the principles of law applicable to corporations under the former, were borrowed chiefly from the Roman law, and from the policy of the municipal corporations established in Britain and the other Roman colonies, after these countries had been conquered by the Roman arms. Under the latter system, corporations were divided into ecclesiastical and lay, civil and eleemosynary.

7. *Under what disabilities were corporations placed under the Roman law?*—269, 270.

They could not purchase, or receive donations of land, without license, nor could they alienate without just cause. They could only act by attorney; and the act of the majority bound the whole; and they were dissolved by death, surrender, or forfeiture.

8. *When did corporations for the advancement of learning come into use?*—270.

Not until about the thirteenth century, though they may be said to have existed in an imperfect form at a much earlier period.

9. *About what time were civil or municipal corporations established in Europe, for political and commercial purposes?*—271.

Cities, towns, and fraternities were invested with corporate powers and privileges, and with a large share of civil and criminal jurisdiction, in the early periods of the history of modern Europe. These immunities were sought after from a spirit of liberty as well as of monopoly, and created as barriers against feudal tyranny. They afforded protection to commerce and the mechanical arts, and formed some counterpoise to the exorbitant power and unchecked rapacity of the feudal barons. By this means, order and security, trade and the arts revived in Italy, France, Spain, Germany, Flanders, and England. But although corporations were found to be very beneficial in the earlier periods of modern European history, in keeping alive the spirit of lib-

erty, and in sustaining and encouraging the efforts for social and intellectual improvement, their exclusive privileges have too frequently served as monopolies, checking the free circulation of labor, and enhancing the price of the fruits of industry. Adam Smith does not scruple to consider them, throughout Europe, as generally injurious to the freedom of trade, and the progress of improvement. The propensity in modern times has, however, been to multiply civil corporations, especially in the United States, where the demand for charters of incorporation is not merely for municipal purposes, but usually with the object of assisting individuals in their joint stock operations and enterprising efforts, directed to the business of commerce, manufactures, and the various details of internal improvement.

10. *What is the relation usually existing between corporations and the government creating them?*—272, and notes.

Acts of incorporation are contracts between the government and the company, which can not ordinarily be affected by legislative interference; and it has accordingly been attempted to retain a control over private corporations in the State of New York by a clause, now usually inserted in the acts of incorporation, that "it shall be lawful for the Legislature, at any time hereafter, to alter, modify or repeal the act." In Massachusetts, there is a standing provision that all acts of incorporation shall be liable to alteration or repeal at the discretion of the Legislature, unless there be in the act an express provision to the contrary; and similar provisions exist in Connecticut and Vermont. In Louisiana, the duration of corporations is limited to twenty-five, and in North Carolina to thirty years, unless specially provided otherwise.

11. *How are corporations divided in the United States?*—173.

Into aggregate and sole.

12. *What is a corporation sole?*—273.

It consists of a single person, who is made a body corporate and politic, in order to give him some legal capacities and advantages, and especially that of perpetuity, which, as a natural person, he can not have. A bishop, dean, parson, and vicar,

are given in the English books as instances of sole corporations. There are instances in this country of a minister of a parish, seized of parsonage lands in the right of his parish, being a sole corporation, and of county and town officers created sole corporations by statute. The word "successors" is generally as necessary for the succession of property in a corporation sole, as the word "heirs" is to create an estate of inheritance in a private individual.

13. *What are corporations aggregate?*—274.

The union of two or more individuals in a body politic, with capacity of succession and perpetuity. A fee will pass to a corporation aggregate without the word successors in the grant, it being a body in its nature perpetual.

14. *What kind of corporations are most in use?*—274.

Aggregate corporations are most in use with us.

15. *What is meant by ecclesiastical corporations?*—274.

They are those of which the members are spiritual persons, and the object of the institution is also spiritual. With us they are called religious corporations.

16. *How are lay corporations divided?*—274.

Into eleemosynary and civil.

17. *What is an eleemosynary corporation?*—274.

It is a private charity, constituted for the perpetual distribution of alms. In this class may be ranked hospitals for the relief of poor, sick, and impotent persons, and colleges and academies established for the promotion of learning, and endowed with property by public and private donations.

18. *How are civil corporations divided?*—275.

Into private and public.

19. *What are public, and what private, corporations?*—275.

Public corporations are such as are created by government

for political purposes, as counties, cities, towns and villages; they are invested with subordinate legislative powers, to be exercised for local purposes connected with the public good, and such powers are subject to the control of the Legislature of the State. A bank created by the government, for its own uses, and where the stock is exclusively owned by the government, is a public corporation. So is a hospital created and endowed by the government for general purposes. But a bank, whose stock is owned by private persons, is a private corporation, though its objects and operations partake of a public nature, and though the government may become a partner in the association by sharing with the corporators in the stock. The same thing may be said of insurance, canal, bridge, turnpike and railroad corporations. A hospital founded by a private benefactor is, in point of law, a private corporation, though dedicated by its charter to general charity. If the foundation of an institution be private, the corporation is private, however extensive the uses may be to which it is devoted by the founder, or by the nature of the institution.

20. *How are corporations created?*—276.

In England, by prescription, royal charter, or act of Parliament. With us, they are created by authority of the Legislature; they may also exist in this country by prescription, which presupposes a grant.

21. *What are the ordinary powers of a corporation?*—277, 278.

1. To have perpetual succession, and, of course, the power of electing members in the room of those removed by death or otherwise. 2. To sue and be sued, and to grant and receive by their corporate name. 3. To purchase and hold lands and chattels. 4. To have a common seal. 5. To make by-laws for the government of the corporation. 6. The power of motion, or removal of members.

22. *What are quasi corporations?*—278.

Persons who are invested with a corporate capacity for particular specified ends, but who can in that capacity sue and be sued as an artificial person. Thus, for instance, in New York, overseers of the poor, commissioners of highways, trustees of

common schools and others are invested with corporate attributes *sub modo*.

23. *Are the statutes of mortmain in force in this country ?—283.*

They are in Pennsylvania. In the other States it is understood that they have not been reënacted or practiced upon, and the inference from the statutes creating corporations and authorizing them to hold lands to a certain limited extent is, that our statute corporations can not take and hold real estate for purposes foreign to their institution.

24. *Can corporations take lands by devise ?—285.*

They are excepted out of the statutes of wills in England and in New York, and in most of the other States.

25. *What is now the general rule as to the power of corporations to make contracts ?—289-292.*

It was decided* by the Supreme Court of the United States that whenever a corporation aggregate was acting within the range of the legitimate purpose of its institution, all parol contracts made by its authorized agents were express and binding promises of the corporation ; and all duties imposed upon them by law, and all benefits conferred at their request, raised implied promises for the enforcement of which an action lay. But corporations, like natural persons, are bound only by the acts and contracts of their agents done and made within the scope of their authority.

26. *By what name must corporations take and grant ?—292.*

By their corporate name ; but a misnomer will not invalidate a grant by or to a corporation, when the true name is necessarily to be collected from the instrument, or is shown by proper averments.

27. *Can the majority of a corporation bind the whole ?—295*

As a general rule, if the act is to be performed by the constituent members, a majority of those who appear at a regular

* 7 Cranch, 299.

corporate meeting may act ; but if the corporate act is to be done by a select and definite body, as by a board of directors, a majority of the definite body must be present, and then a majority of the quorum may decide.

28. *What of the power to make by-laws ?—296.*

It must be exercised reasonably, and in sound discretion, and strictly within the limits of the charter, and in subordination to the Constitution and general law of the land, and the rights dependent thereon.

29. *What of the power of amotion ?—297.*

It has been decided* that this power is as incident to and necessary for corporate bodies, as the power of making by-laws. But it must be exercised for good cause, and for some offense that has an immediate relation to the duties of the party as a corporator.

30. *Is there a difference between disfranchisement and amotion ?—298.*

Yes ; the former applies to members, and the latter only to officers ; and if an officer be removed for good cause he may still continue a member of the corporation.

31. *What is the modern doctrine respecting corporate powers ?—298, 299.*

It is to consider corporations as having such powers as are specifically granted by the act of incorporation, or as are necessary for the purpose of carrying into effect the powers expressly granted, and not as having any other. The Supreme Court of the United States declared this obvious doctrine, and it has been repeated by the decisions of the State courts.

32. *Where does the right of visitation of corporations lie ?—300-304.*

The visitation of civil corporations is by the government it-

* 1 Burr. Rep., 517.

self, through the medium of the courts of justice. Private and particular corporations, founded and endowed by individuals for charitable purposes, are subject to the private government of those who are the efficient patrons and founders. If there be no visitor appointed by the founder, the law appoints the founder himself, and his heirs, to be the visitors. The power of visitation, strictly speaking, extends only to eleemosynary corporations.

33. *How may corporations be dissolved?*—305.

A corporation may be dissolved, it is said, by statute; by the natural death or loss of all the members, or of an integral part; by surrender of its franchises; and by forfeiture of its charter through negligence or abuse of its franchises.

LECTURE XXXIV.

OF THE HISTORY, PROGRESS, AND ABSOLUTE RIGHTS OF PROPERTY.

1. *What first gave title to property in lands and movables?*—318, 319.

Occupancy. It is the natural and original method of acquiring it, and upon the principles of universal law, that the title continues so long as occupancy continues, there is no person, even in his rudest state, who does not feel and acknowledge, in a greater or less degree, the justice of this title. The right of property, founded upon occupancy, is suggested to the human mind, by feeling and reason, prior to the influence of positive institutions. There have been modern theorists, who have considered separate and exclusive property as the cause of injustice, and the unhappy result of government and artificial institutions. But human society would be in a most unnatural and miserable condition if it were possible to be instituted or reorganized upon the basis of such speculations. The sense of property is graciously bestowed upon mankind for the purpose of rousing them

from sloth, and stimulating them to action. It leads to the cultivation of the earth, the institution of government, the establishment of justice, the acquisition of the comforts of life, the growth of the useful arts, the spirit of commerce, the productions of taste, the erections of charity, and the display of the benevolent affections.

2. *What is the American law regarding title to wrecks?*—322.

The statutes of New York, Massachusetts, and other American States, declare that nothing that shall be cast by the sea upon the land shall be adjudged a wreck, but the goods shall be safely kept for the space of a year for the true owner, to whom the same are to be delivered upon his paying a reasonable salvage; and if the goods be not reclaimed within that time, they shall be sold, and the proceeds accounted for to the State.

3. *Does the English law of market overt apply with us?*—324, 325.

It has been frequently held in this country, that the English law of market overt had not been adopted; and, consequently, as a general rule, the title of the true owner can not be lost without his own free act and consent.

4. *What is the general doctrine regarding improvements on land recovered by action of ejectment?*—334, 335, n. (b.)

By the English law and the common law of this country, the owner recovers his land by ejectment, without being subjected to the condition of paying for the improvements which may have been made upon the land. The improvements are considered as annexed to the freehold, and passed with the recovery. But the statute law in Massachusetts, New Hampshire, Vermont, and other States, has altered and modified the common law in this respect.

5. *Are there not cases in which the rights of property are made subservient to the public welfare?*—338, 339, n. (b.)

Yes; there are many such. It is a maxim of law, that a private mischief is to be endured rather than a public inconvenience. The right of eminent domain gives to the Legisla-

ture the control of private property for public uses, and for public uses only. But the Constitution of the United States, and those of most of the States of the Union, have imposed a great and valuable check upon this exercise of legislative power, by declaring that private property shall not be taken for public use without just compensation; and it seems to be necessarily implied that the indemnity should, in cases which will admit of it, be previously and equitably ascertained, and be ready for reception concurrently in point of time with the actual exercise of the right of eminent domain.

LECTURE XXXV.

OF THE NATURE AND VARIOUS KINDS OF PERSONAL PROPERTY.

1. *Of what does personal property usually consist?*—340.

It usually consists of things temporary and movable, but it includes all subjects of property not of a freehold nature, nor descendible to the heirs at law.

2. *What is a chattel?*—342.

Chattel is a very comprehensive term in our law, and includes every species of property, which is not real estate, or freehold.

3. *What is the most leading division of personal property?*—342
Into chattels real and personal.

4. *What are chattels real?*—342.

Chattels real are interests annexed to, or concerning the realty, as a lease for years of land; and the duration of the term of the lease is immaterial, provided it be fixed and determinate, and there be a reversion or remainder in fee in some other person.

5. *What is the general rule as to fixtures?*—343-345.

Those things which the tenant has affixed to the freehold, for the purpose of trade or manufactures, may be removed, when the removal is not contrary to any prevailing usage, or does not cause any material injury to the estate, and which can be removed without losing their essential character or value as personal chattels. The tenant may also remove articles put up at his own expense for ornament or domestic convenience, unless they be permanent additions to the estate, and so united to the house as materially to impair it if removed, and when the removal would amount to a waste. The right of removal will depend upon the mode of annexation of the article, and the effect which the removal would have upon the premises.

Questions regarding fixtures principally arise between three classes of persons: 1. Between heir and executor; and there the rule obtains with most rigor in favor of the inheritance. 2. Between the executor and the remainderman or reversioner; and here the right to fixtures is considered more favorably for the executors. 3. Between landlord and tenant; and here the claim to have articles considered as personal property is received with great latitude and indulgence. 4. There is an exception, of a broader extent, in respect to fixtures erected for the purposes of trade, and the origin of it may be traced back to the dawnings of modern art and science.

6. *How is property in chattels personal divided?*—347.

It is either absolute or qualified.

7. *What does absolute, and what qualified, property in a thing denote?*—347.

Absolute property denotes a full and complete dominion over it. Qualified property means a temporary or special interest, liable to be totally divested on the happening of some particular event.

8. *In what may a qualified property subsist?*—347-350.

It may subsist by reason of the nature of the thing or chattel possessed, or from the nature of the title by which it is held. The elements of air, light, and water, are the subjects of quali-

fied property by occupancy. Animals *feræ naturæ*, so long as they are reclaimed by the art and power of man, are also the subjects of qualified property; but when they are abandoned or escape, and return to their natural liberty and ferocity, without the *animus revertendi*, the property in them ceases.

A qualified property in goods subsists by reason of the title, when they are bailed, pledged, or distrained. In those cases the right of property and the possession are separated; and the owner has only a property of a temporary or qualified nature, which is to continue until the trust be performed or the goods redeemed; and he is entitled to protect this property, while it continues, by action in like manner as if he were absolute owner.

9. *May personal property be held in joint tenancy, or in common?*—350.

Yes; and in the former case, the same principle of survivorship applies which exists in the case of a joint tenancy in lands. This right of survivorship does not, however, apply to stock used in any joint undertaking, either in trade or agriculture; when one of such joint tenants dies, his interest or share in the concern goes to his personal representatives.

10. *What are choses in action?*—351.

They are personal rights not reduced to possession, but recoverable by suit at law. Money due on bond, note, or other contract, damages due for breach of covenant, for the detention of chattels, or for torts, are included under this general head, or title of things in action.

11. *May chattels be limited over by way of remainder after a life interest in them is created?*—352, 353, n. (d.)

Yes; but not after a gift of the absolute property. The limitation may be either by will or deed. By the New York Revised Statutes, the absolute ownership of personal property can not be suspended for a longer period than two lives in being at the date of the instrument creating it, or, if by will, in being at the death of the testator. The accumulation of the profits of personal property may be made as aforesaid, to commence from the date of the instrument or death of the person executing the

same, for the benefit of one or more minors then in being, and to terminate at the expiration of their minority; and if directed to commence at a period subsequent to the date of the instrument, or death of the person executing it, the period must be during the minority of the persons to be benefited, and terminate at the expiration of their minority. All directions for accumulation contrary hereto are void; and those for a longer term than such minority, are void as to the excess of time.

LECTURE XXXVI.

OF TITLE TO PERSONAL PROPERTY BY ORIGINAL ACQUISITION.

1. *How may title to personal property accrue?*—355.

In three different ways: 1. By original acquisition. 2. By transfer by act of law. 3. By transfer by act of the parties. The right of original acquisition may be comprehended under the heads of occupancy, accession, and intellectual labor.

2. *What is the modern rule as to the original acquisition of goods by occupancy?*—356.

The title by occupancy is becoming almost extinct under civilized governments, and it is permitted to exist only in those few special cases in which it may be consistent with public welfare; such as in case of goods casually lost by the owner and unreclaimed, or designedly abandoned by him.

3. *What is the rule as to the acquisition of property by accession?*—360.

That property in goods and chattels may be acquired by accession; and, under that head, is also included the acquisition of property proceeding from the admixture or confusion of goods.