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RIGHTS AND LIABILITIES OF RAILROAD CORPORATIONS.[1]

FIRST ARTICLE.

"Jus privatum sub tutelâ juris publici latet."

A detailed exposition of all the points of law affecting railroad companies, would not, if it were practicable, be consistent either with the objects or the limits of an article. On the other hand, to discuss some single question, taken at random, would, in propriety, involve a change of title. The difficulty may perhaps be best overcome by selecting a part of the subject, of sufficient intrinsic importance, and so distinctive that the principles found to determine it, shall be susceptible of a general application.

But its extensiveness is not the only embarrassing circumstance attending "Railroad Law." In England, Parliament has assumed the duty of regulating the whole matter of the construction and management of railways, down to the most minute particulars:

[1] SYNOPSIS.—The subject—its extensiveness—its peculiar difficulties. Complex nature of the railroad corporation: Distinctive character owing to the railroad. What is a railroad? Corporation's interest in the land, not in general an easement, but an estate. Quære, as to original proprietor's right of entry for condition broken. Whether there is a public interest in the road protecting it against seizure by creditors and voluntary alienation. State *vs.* Rives: two premises. Examination of 1st—corporation's estate in any land—Coke's doctrine: Stat. de Terr. Templariorum: application to railroad. 2d premises: The great issue. Are railroads highways? Position of authorities: Reasons on negative side and answers. Two

nothing has been left to the courts but to interpret the statutes—little to text-writers, but to make convenient indices to them. But among us no such complete system exists; and if the legislative authority should hereafter undertake its formation, the independent movement of so many States must prevent an uniformity of execution. In what has been done, much diversity is apparent. Yet the subject owes its origin to the statute book, and cannot be considered altogether apart from it. As the case stands, legislation, content with having brought into being a creature, whose like was never before seen on earth, leaves it to common law to show, if it can, how that which seems a monster may be made a tame and decorous public servant.

Corporations, as such, have become familiar to the law, and if there were any class among them to which this nondescript could be referred, it would be comparatively easy to deal with it. Then, the only labor would be, that of accurately noting exceptional peculiarities. But the railroad corporation differs generically from all other artificial persons. Not a public body, it is yet vested with powers that cannot readily be distinguished from attributes of sovereignty. If any thing seems to be under the immediate control of the State, it is the public way which affords a common passage from one border of the land to the other; but who now travels except on the railway? No wonder that those who govern the substitute with a more absolute authority than the king himself used to exercise over his proper highway, should be looked upon as public functionaries. This natural impression has the countenance of the

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capacities with which a railroad corporation is invested; neither of them separately affects the road with liability to alienation—both conjoined cannot.

Result of investigation expressed in three propositions. Principles applied to specific cases. Mortgages of railroads. Mortgages under legislative authority—to the State—to individuals and corporations. The corporation's public office—how far it affects its private rights and liabilities. Use of steam: Question of evidence: Massachusetts law. Taxation. The corporation as common carrier. Quære as to supposed agreement of English and American law with regard to burden of proof in questions of negligence. Exclusive possession of road increases the corporation's liability. Laying out of railroads. British policy: rules for estimating compensation—difference with respect to set-off of advantages. Conclusion.

Supreme Court of South Carolina, who have held that a railroad corporation is in fact the mere agent of the State.[1] The English companies, during the period of their infancy expressly claimed to act in this capacity, and they did so in order that the land owners might submit without murmuring to what was declared to be a direct exertion of imperial power. The result has been curious.[2] Parliament took them at their word. "You *are* our servants and we will forever hold you to the condition of servants." To the spirit of close and jealous surveillance appropriate to the relation thus established, is due that remarkable series of acts which make up what may fitly be called the Railway Code of England. Whether the government has by this means gained a new and potent engine which may sometimes prove as dangerous to public liberty as it is now serviceable to public convenience, is a question of politics in which *we* happily have an interest only as spectators.

But the railroad corporation presents also another aspect. Those extensive works which, when contemplated in the aggregate, excite a double amazement by their unparalelled grandeur and their wide beneficence, are recognized on near approach, to originate in concentrated selfishness. We see a trading company, characterized like other bodies whose only animating principle is the instinct of acquisition, by much indifference to the rights of others, and by frequent persistence in profitable wrong-doing.

To discover a theory which shall reconcile these opposite qualities, is the problem whose solution is essential to a clear understanding of any right or of any liability of a railroad corporation. That the task is of acknowedged difficulty, is perhaps no great objection; since this circumstance not only furnishes an incitement to effort but gives reason to hope that indulgence will be extended to speculation which otherwise might be obnoxious to censure as crude and presumptuous.

A railroad corporation may be classed in some respects with the proprietor of a line of stage coaches; viewed in another light, it resembles a turnpike company; and thirdly, regarded in its capa-

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[1] Rice's R. 383.

[2] 11 Jur. part 2d, 101.

city of possessing land which has been taken by public authority to be applied to purposes connected with the public welfare, it finds an humble type in the owner of a grist mill. The knot which binds together all these attributes—that which gives to this corporation, not merely its name, but its character, is the railroad. What is a railroad?

It is proposed to consider the nature of the interest which a railroad corporation has in the land on which the road is laid, and of the franchises which accompany the use and occupation of that land.

In the immediate course of the investigation, not a few important and unsettled practical questions will be found to offer themselves for examination; and if any definite conclusion shall fortunately be arrived at, it will afford a vantage ground from which it may be possible to take a comprehensive and consistent view of some of the other questions affecting these companies in their relations as well to the public as to individuals.

What is the tenure by which the soil of the railroad is held?

It is asserted on the one side, that the corporation possesses it in absolute and unconditional fee; that the whole, or any part may be pledged or aliened; that it is liable like other lands to be taken on execution and sold; and that the purchaser at such a sale will receive it discharged of all duties which are attendant upon it in the hands of the corporation.

On the other side, various positions have been assumed. It has been urged that the State can only acquire an easement in the lands upon which it exercises its right of eminent domain; and that a railroad corporation, holding under the State, likewise obtains a mere easement. But it is by no means obvious what is to prevent the State, as judge of how much the public need requires, from taking *to itself* if it choose, the fee as well as an easement. There is certainly nothing in the nature of a *highway* making it indispensable that some interest in it should be held by private persons, for Hale declares that the soil of all navigable rivers (which are true highways) belongs prima facie to the king "in point of property as

well as franchises."[1] With respect to railroads, it is true that in some States the power of forcible seizure extends only to an easement. But companies often purchase without having to resort to their compulsory authority, and it seems no where to be understood that the legislature forbids the acquisition by this means of an estate in the land. A railroad corporation must therefore almost invariably own the soil of part of its road, and may own that of the whole. Furthermore, in England, and probably in most of the United States, railroad corporations are invested with power to acquire by *compulsory process* a freehold interest in land needed for the road; while the language of courts leaves no room for maintaining that there is any legal principle to interfere with the complete execution of such a power when granted.[2] It is impossible then, to adopt the basis of argument assumed no long time since in a highly respectable quarter where it was asserted as an universal truth that railroad corporations obtain no more than an easement.[3] The paper referred to appears to be open to the criticism that in it "easement" and "estate upon condition" are used as convertible terms. One case or the other must be taken as a type; we must suppose either that the corporation has merely the right of way and its incidents, or that it possesses an estate in the land. The latter hypothesis deserves preference, as well because it more generally corresponds with the reality, as because it involves the more numerous and weighty difficulties. Throughout this essay, therefore, except where express reference is made to the case of an easement, the railroad corporation will be regarded as possessing the ownership of the soil occupied for the purposes of the road.

A second point raised is, that the corporation, in attempting to alien its land, *ipso facto* terminates its existence, so that the land, instead of passing by the conveyance, reverts instantly to the original grantor. But the operation of the company's grant—and a

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[1] 1 De Jure Maris, 1 cap. vi.

[2] 8 Vict. cap. 18, s. 75; Laws of N. Y. 1847, p. 123, 4; 4 Paige, 384, 393; 20 Johns. 735; 11 Leigh, 76.

[3] 28 Am. Jur. Article on R. R. Mortgages.

forced sale by the hands of the sheriff stands on the same footing—is, either to convey the estate out of the company, or not. If the former, the fee has become vested in the grantee, and the question of dissolution cannot affect it. If, on the other hand, the conveyance be void, the cause of dissolution never arose. There seems to be no way of escaping the dilemma, unless the law acknowledges what metaphysics deny, that a thing can both be and not be at the same moment. Without stopping, then, to examine how far *Slee* vs. *Bloom*,[1] where a decision of Chan. Kent was overruled, can be reconciled with other authorities, this point may safely be dismissed.

Thirdly, it has been contended that since the corporation purchases in virtue of the charter, which enjoins the construction and maintenance of a road upon the soil, the law will imply a condition in the grant that the land is to be devoted to this purpose.[2] There is undoubtedly much force in this, and it is at least a question susceptible of being mooted, whether the original proprietor, coming forward and claiming to have the charter considered as a part of his deed, might not recover from the company's grantee (the State not interfering) both the freehold and all wood, iron, &c., annexed to it. Yet a remedy of this sort, supposing it capable of being effected, would only be private and partial. Does not the law provide any way for preserving the use of the entire road to the community at large, who are so deeply interested in its permanence?

The Supreme Court of North Carolina has answered in the negative.[3] Against this direct authority are found only occasional vague questionings, and a certain feeling of doubt on the part of the bar. Nothing has appeared in print, so far as the present writer is aware, controverting *State* vs. *Rives*. On the other hand, an article supporting the opinion of the court in that case, written possibly by one of the defendant's counsel, has been published in the American Law Journal. The volume containing it (the 4th or 5th) not being within reach, it cannot be ascertained whether the author adds any reasons to those advanced by the court.[4] The latter, whose opinion

[1] 19 Johns. R. 456. [2] 1 Whart. 410, *contra*. [3] 5 Ired. Law R. 307.

[4] The 4 Am. Law Mag. 254, contains the article referred to, which will repay perusal.—*Eds Am. Law. Reg.*

is given by Ruffin, C. J., take a ground which is simple and intelligible. Lands, say the court in substance, which come into possession of a corporation do not thereby lose any of the incidents which before belonged to them, nor does the fact that the corporation contributes greatly to public prosperity, exempt its property from any of the claims which its transactions with individuals give rise to. This is the general rule applicable to all the property of all corporations; and, continue the court, coming to the second division of the argument, there is nothing in the nature of a railroad to render *it* an exception.

Let us look for awhile at the first of these two points—the general principle. The estate which a corporation has in any land, (say the books,) is of an anomalous kind. At the dissolution of the corporation, the lands in its possession, instead of escheating to the lord or to the sovereign, revert to the several grantors, from whom it received them.

Blackstone[1] calls this a *life estate* terminating by its regular limitation; but such an explanation by no means clears away the difficulties of the case. A grantee of the corporation takes an estate in fee simple, yet how can a *tenant for life* lawfully demise a larger estate than he himself is seized of? Blackstone gives a much more accurate description in another place,[2] where he says, speaking of the reversion of a corporation's land to the donor, "this is perhaps the only instance where a reversion can be expectant on a grant in fee simple." This exception to the course of law would seem to have been adopted on the sole authority of Lord Coke: "In the case of a body politic or incorporate, the fee simple is invested in their politic or incorporate capacity created by the policy of man, and therefore the law doth annex this condition to every such gift and grant, that if such body politic or incorporate be dissolved, the donor or grantor shall re-enter, for that the cause of the gift or grant faileth.[3] Coke says nothing about the effect of a grant over before dissolution. The old case of *Southwell* vs. *Wade*,[4] which is

[1] Black. Comm. 484.
[2] Black. Comm. 256.
[3] Co. Litt. 136.
[4] Popham, 91; 1 Roll. Abr. 816.

usually referred to as establishing that dissolution, does not affect land previously demised, and which is cited by Hargrave as contradicting Coke, appears to have related to a thing not lying in tenure, and therefore not at any rate subject to escheat. Indeed, the report of the case in Topham might well leave a question whether it either impugns Coke's doctrine, or makes an exception to it. In Rolle's Abridgement, it is true, the heads of the decision are stated in much broader and stronger terms. It is not unworthy of remark that Rolle applies the word *escheat* as well to the case of a reversion to the donor as to escheats proper, or that lapse into the hands of the lord, which occurs when a tenant of the fee dies without heirs; and Flintoff following Preston, observes that this reversion of a corporation's lands is of the self-same nature as escheat, the mesne grantor being substituted for the lord, and may be a relic of the practice of unlimited sub-infeudation so prevalent until interrupted by the statute of Quia Emptores. Hargrave refers to Sir Matthew Hale's MSS. for cases going to show, in opposition to Coke, that lands of bodies corporate are not exempted from escheat. The great author of the Institutes himself cites the statute De Terris Templairiorum, 17 Ed. 2. Now, the preamble to that statute sets forth that the order of Templars having been dissolved, the question arose whether the lords of whom they had held might take their lands as by escheat, and that this question being referred to all the justices, they had pronounced that the king and other lords "well and lawfully might take and retain the aforesaid tenements as their escheats." Here, then, we have a formal adjudication to the effect that in the time of Edward II. the law was not as it is stated by Coke. The statute goes on to say, that the lands above mentioned having been given to the Templars for the defence of Christendom, the king and the other lords to whom the seigniory belonged, being assembled in parliament, were pleased to enact *ob salutem animarum et ob conscientiæ serenationem*, that the pious purpose of the donors ought not to be defeated, and that these lands should accordingly be to the Knights of the Hospital of St. John of Jerusalem, they being, like the late order of Templars, devoted to the defence of Christians and of the Holy Church.

This disposition of the Templar's lands has something more than an historical interest. Does it not throw light on that which Coke leaves unexplained, the reason, why the lands of corporations came to be exempted from escheat? In this remarkable statute we see the common law meeting a new case and deciding it in perfect conformity to its regular operation; and we see, also, how another influence interposed and made an exception, which, singularly enough, has been followed where the parliamentary authority was wanting, while the common law adjudication, which the statute itself records, has been lost sight of, or disregarded. At that early age, almost all the instances of bodies corporate to be met with were either religious and charitable, or municipal; and even these latter seldom received grants of land for any other than charitable uses. The grants were voluntary. A condition went with them, which the law had merely to enforce, not invent; nor could this condition have had originally the form into which Coke converts it. What was uppermost in the mind of the penitent knight when he bestowed a share of his broad lands upon the neighboring abbey, to be so used as to make annual expiation for the deeds of violence and bloodshed by means of which he had won them, was no anxious desire that those lands should revert, on the happening of a contingency, to his heir of the third, or fifth, or tenth generation. Nor certainly, if any uneasiness affected him, would it have been allayed by contemplating the probable defeat of the penalty of mis-appropriation by a demise over to some lay stranger. Yet, we can easily imagine it might have been a perfect relief to know, that when the corporation he had selected as the trustee of his bounty should be about to expire, the gift would be so transferred as to carry out the original intention. The disposition of parliament, and of courts—when the policy that dictated the statutes of mortmain was not at work—must have been to see the lands applied to the pious uses for which they were granted, and to consider the question of alienation of importance only as it bore on the real condition of the grant. The spirit which gave rise to the spirit of cy-pres is much older than either *The Attorney General* vs. *Syderfin*, or *Frier* vs. *Peacock*.

A railroad corporation does not receive its lands for the execution

of a charitable purpose; yet, since the taking is compulsory, it may fairly be urged that the reason for enforcing the condition of the grant is not less strong in this case than in that of the endowment of an abbey or hospital. If the creditors of the company may break up the line of the road into fragments; if the company itself have power to alien the separate portions by way of mortgage, or otherwise, the condition is clearly made to fail; and there would be the same ground as in the matter of a charity, for the interposition of the sovereign power, speaking either through judiciary or legislature. When, therefore, the principles out of which the commonly received rules respecting the real estate of corporations have grown, are applied to the railroad, we find they require it to be regarded in a different light, and treated in a different manner from ordinary lands. Perhaps, no very great stress ought to be laid on these analogies, yet, if it be true, that all real estate held by corporations, differs in an extraordinary particular from real estate in the possession of a natural person, and that the reason in which this peculiarity originated would make, if carried out, a *further* difference in favor of the land on which a chartered railway is constructed, we would appear to have found something which, even as a direct argument, is of no contemptible value. All that is now asked, however, is simply to have it noted that there exists, between a railroad and other lands owned by the same company, a distinction quite independent of the nature of the *use* to which the railroad is applied. Even the first premise, then, of the argument on which *State* vs. *Rives* is founded, is not free from doubt. Without going further, we are able to perceive that to show a railroad to be land *owned by a corporation*, is not sufficient to establish its liability to the incidents of other lands.

We come now to the second point made by the court in that case; and here lies the real issue. These great roads, which disregard alike political and natural obstacles; which threaten to pierce every high hill—to wind into every secluded valley; from whose approach no man, if he would, can fly; are they, or are they not, public highways?

On the authorities the question appears to stand thus: The court

of North Carolina, in effect withdrawing from a position which it once defended with pre-eminent energy, must be understood as positively deciding that they are not public highways.[1] The Supreme Court of Mississippi shows a disposition to follow North Carolina.[2] In a New York case, Gridley, J. remarked, that "a railroad is in no sense a public highway."[3]

The constant language of the English courts implies a different view. In the case of *The King* vs. *Severn and Wye R. Co.*,[4] it was plainly assumed that a railroad is a public highway.

As for American cases, *Bonaparte* vs. *Camden and Amboy R.R. Co.*[5] and *Railroad Co.* vs. *Chappell*,[6] are very explicit; and other courts have not failed to speak to a similar purport.[7] The acts of incorporation frequently describe the roads to be constructed, as highways.[8] When express declaratory terms do not appear, the provisions of the act respecting the management and final disposition of the road are often of a nature to show very conclusively its public character. Such, for example, as provisions for the payment into the public treasury of all the net income exceeding a certain percentage on the capital stock, and for securing to the State the power to purchase the entire interest of the company. So contrary is it to the innate feeling of the sacredness of private property to conceive that the State, after forcibly taking the land of an individual, in the name of the general good, can allow it to be diverted to an inferior object, that the Supreme Court of North Carolina was led in a previous case,[9] as we have seen, to fall into the common mode of speaking. Even now, when it is proceeding to decide the opposite way, it seems to feel that there is need of argument to counteract a pre-existing presumption.

It may be proper, in this place, to examine briefly some of the principal reasons which can be urged, why the railroad ought not to be considered a highway. First, it is objected

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[1] 5 Ired. L. R. 307. [2] 9 Sm. & M. 431. [3] 3 Barb. 468.
[4] 2 Barn. & Ald. 646. [5] 1 Bald. C. C. R. 205. [6] Rice R. 383.
[7] 3 Paige, 45—74; 8 Harr. Pa. R. 336; 8 Dana, 276.
[8] For examples, see N. J. and Penn. Charters, [9] 2 Dev. & Bat. 451.

that all persons are not permitted to travel upon it in their own vehicles. To this it might be replied, that such a right has not been altogether wanting in more than one State.[1] In England it not only exists universally, but is sometimes exercised.[2] But there is little need to resort to any subterfuge. Restrictions upon the manner of use are not peculiar to this case: all highways have been subject to more or less government. The rules frequently enforced on turnpike roads respecting the weight of load, dimensions of wheel-tires, the mode in which vehicles are to pass each other, &c., are instances in point. All these provisions have had reference to public convenience and safety. Now, here is a highway which cannot be used without great inconvenience and great danger, unless additional regulations are made. Even then were the road, when completed, thrown open to all men by proclamation, it is evident that all could not in the same manner participate in its use. The transportation of passengers and freight, if no longer a monopoly, must fall into the hands of a comparatively small number of carriers. Mr. Justice Baldwin's criterion of a public highway is the true one: "Can the public participate in its use by right, or only by permission?" It is remarkable that the very definition given by the North Carolina court, with the purpose of excluding the railroad, fails to do so:—"A common public highway, on which all citizens are free to pass." While the nature of this mode of conveyance renders some restriction indispensable, no more is imposed than is absolutely necessary. A man may still, if he please, take his horse and chaise, as well as his own person, over the road. All that is enjoined is, that he take them in a prescribed manner. One species of property we have long

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[1] See Report on Railways, submitted to the Senate of Massachusetts, February 3d, 1837. If the able argument in this report had gone on a step further, and shown that railroads are not only applied to a public use, but to a public use of a *particular kind*, any discussion of the present topic would be superfluous. See also Laws of Pennsylvania, 1842, p. 366–368. A provision in Rhode Island Charter, similar to that formerly in force in Massachusetts, appears to be still unrepealed.

[2] 4 Ad. & E., N. S. 18; 3 Jur. 103.

been accustomed to see carried in a way provided and regulated by law. The mails are open to all, yet the contractor who transmits them—whatever be the mode of his compensation—enjoys a real monopoly. Less than a hundred and fifty years ago, the Virginia planter used to attach shafts to a tobacco hogshead, and then, mounting negroes on horses geared tandem, would send a portion of his crop trundling *roller-wise* to market. The vehicle was accommodated to a highway impassable by any ordinary means of conveyance. In the present case, just as truly as then, the necessity has its origin in causes independent of legislation. The necessity operates universally. If it place individuals under a degree of restraint, it not unfrequently inflicts utter ruin upon companies, whose franchises it in effect annihilates by sweeping away the circumstances to which they were adapted. The law neither lends its aid to advancing science out of partiality to corporations, nor will it consent to *shackle* science for the sake of an illusory adherence to any theory of private rights.

But the objection that tolls are taken in this peculiar form, being waived, the difficulty is next started, that the corporation, besides being both proprietor of the highway, like a turnpike company, and possessor of an exclusive franchise as carrier, is also owner of the freehold. This additional feature makes the case more unique, but it brings no new difficulty in principle. There must be some owner of the land. The objection vanishes immediately, if we suppose the corporation divided into two—one the owner of the soil, the other possessed of the franchise of maintaining a road and carrying passengers upon it for toll; and there is no violence in the supposition, since a corporation is a mere artificial entity, the creature of State policy. This hypothesis leads to something better than a hypothesis—to that which we started to seek, a natural and consistent theory. What does the corporation own? The land. But the USE of the highway, the common right of passing—no matter upon what conditions—over that land:—what is this? An easement belonging, not to the corporation, but to those who enjoy it, the public. The corporation, indeed, in the capacity represented in the second of the two sub-corporations into which we just now

supposed it divided, has the management of the easement, but the latter does not therefore undergo any change of its nature.

The State vs. *Rives* was a proceeding on an indictment against the purchaser of a portion of a railroad sold by the sheriff, on execution of a judgment against the company. The defendant had begun to take up the rails, and to exercise the rights of an absolute owner. The court, in affirming the liability of a railroad to execution, say: "Railroads, although *publici juris* in some respects, are the subjects of private property, and it is in the latter character that they are liable to be sold, unless forbidden by the legislature: not the franchise, but the *estate of the corporation in the land*, which is a *distinct thing* from the franchise."[1] It is not, then, against the corporation considered as in the enjoyment of a monopoly as carriers, nor as vested with the franchise of taking toll from those who pass over the road, that execution is enforced, but against it merely as the owner of the land.

If now the corporation existed in this latter capacity only, those other powers and privileges having been vested elsewhere, in what respect would the case be altered so far forth as the grounds of this decision are concerned? It would seem, not at all: the corporation would still be there with its debts and would still be possessed of that property which alone was levied upon. Yet now, the land being sold, how would the purchaser take it? Subject unquestionably to the easement; that is, nothing would pass but the barren fee. Let us go a little further and consider what would be the condition of another corporation, possessing all that the railroad corporation possesses *except* the fee of the land. Suppose judgment entered against this other body corporate—can the road now be levied on? Clearly not.[2] On what sound principle can this immunity of the road, which is perfect so long as the fee and the franchise are kept separate, be affected by the circumstance that the two capacities are united—that the same corporation owns the barren fee (as a person may own the soil of a turnpike road,) and is trustee for the public, of the easement?

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[1] 5 Ired. R. [2] 13 S. & R. 210.

The fact that the owner of the freehold receives a *profit* out of a public easement does not in any way qualify the burden with which the land is charged. The law of water courses furnishes an example directly in point. While every stream, actually navigable is *prima facie* a public highway, an unnavigable stream belongs, free of any such servitude, to the proprietor of the banks. If the latter put his stream in a condition to be navigated it does not thereby become public; but if he in addition to this, "purchaseth the king's charter *to take a reasonable toll* for the passage of the king's subjects and puts it in use, these seem to be devoting, and, as it were, consecrating of it to the common use."[1] The fee remains as before, but an easement has been established which no act of the owner of the soil can put an end to. If then the railroad corporation stood in the place of an ordinary owner of land, which is the most favorable supposition for the argument on the other side, its act in obtaining by charter from the State the license to take tolls would be enough to vest in the public a permanent easement. When, in carrying into effect this license, the corporation lays down rails, it may not afterwards remove them, any more than the owner of the stream above mentioned may reduce it to its original condition and render it unnavigable. Where rails were thus taken up by a company, the court of King's Bench granted a mandamus to compel their replacement.[2] It is evident that a grantee of the corporation can have no larger right than the corporation itself; as to the public they occupy the same position. This receipt of tolls, however, is but one of many circumstances going to show a dedication of the road to the public. The very authority to take the land was only given in consequence of an engagement to devote it to this object.

A. W. M.

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[1] Hale De Jure Maris 1. c. 3.

[2] 2 B. & Ald. 646.