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DISFRANCHISEMENT FROM PRIVATE COR-  
PORATIONS.

DISFRANCHISEMENT, in the broad sense of the term, may be defined as the act of depriving a member of a corporation of his right, as such, by expulsion. The power of disfranchisement though vested in many corporations cannot be exercised by them in an arbitrary manner. Each corporator has a certain vested interest in the franchise which, in itself, constitutes property, and of which he cannot be deprived except for sufficient cause and in a proper manner: *State v. Georgia Medical Society*, 33 Ga. 608. If the corporation happen to own property, either real or personal, each member has also a vested interest in that, of which he cannot arbitrarily be stripped: *Evans v. The Philadelphia Club*, 50 Penn. St. 107. Hence "where any member of a corporation feels that he is aggrieved or injured by the illegal or oppressive action of the body it is his right to appeal to the courts for redress and protection; and it is the right and duty of the court to investigate such charges, when properly before it, and to judge of the legality of the action of the corporation in expelling a member or depriving him of any other legal right:" *State v. Georgia Medical Society*, 38 Ga. 608; *Bagg's Case*, 11 Rep. 99.

The power of the courts is, however, confined to the affording of a remedy in case of illegal disfranchisement. They have no

power of themselves to disfranchise the members of a corporation: *Attorney-General v. Earl of Clarendon*, 17 Ves. 491; *Neall v. Hill et al.*, 16 Cal. 145. Unless, indeed, such power be expressly conferred upon them by the charter, in which case it seems probable that their jurisdiction would be exclusive, and the usual powers of the corporate body in the premises ousted: *People ex rel. Gray v. Medical Society of the County of Erie*, 24 Barb. 570.

The aim of this article is to set out briefly the principles by which the courts have been guided in their adjudications upon the exercise of the right of disfranchisement by private corporations. The subject falls naturally into three heads: 1. For what cause may a member be disfranchised; 2. In what manner must a member be disfranchised; 3. In case of an illegal disfranchisement what remedy will the courts afford.

#### I. For what cause may a member be disfranchised.

The right of disfranchising its members may either be expressly conferred upon a corporation by the terms of its charter or implied from the simple fact of the corporate existence. An express authority to exercise this right may assume any one of several shapes. A corporation may be empowered to expel its members for any reasonable cause, in which case it seems that it is for the corporate body, solely, to say what is reasonable cause: *Inderwick et al. v. Snell*, 2 McN. & G. 216.

Again, a corporation may be empowered to expel its members for breaking the established rules and regulations to its injury. Where this is the case the corporation has clearly the power of establishing what lawful and reasonable rules and regulations it pleases, and of expelling its members for such an infringement of them as it deems prejudicial to its interests: *Black and White Smiths' Society v. Vandyke*, 2 Whart. 309. Again, a corporation may be empowered to expel any member in case he be detected in the commission of a certain class of offences. Where this is the case the corporation it seems has the exclusive power of determining whether any specific act comes within the class of offences which constitutes cause for expulsion: *Commonwealth ex rel. Bryan v. Pike Beneficial Society*, 8 W. & S. 247.

In none of the three cases above mentioned will the courts review the action of the corporation, unless of course there be actual *mala fides* shown. See *Regina v. Governors of Darlington Free*

*Grammar School*, 14 L. J. (Q. B.) 67; *People ex rel. Stevenson v. Higgins*, 15 Ill. 110.

Charters, however, conferring such broad powers are not ordinarily granted, and where the courts are vested with the right of incorporating societies, charters containing a grant of such powers will not be approved: *Butchers' Beneficial Association*, 38 Penn. St. 298; *Beneficial Association of Brotherly Unity*, 38 Id. 299. Where the terms of a charter merely provide that the corporation shall have power to disfranchise its members or to disfranchise them when it sees fit, without distinctly specifying what shall constitute sufficient cause, this will not be construed to vest in it any further authority in this regard than it would have by implication independent of all charter provisions: *State ex rel. Graham v. Chamber of Commerce*, 20 Wis. 63.

Corporations whose purposes are primarily or exclusively those of gain have no power of disfranchisement, unless it is expressly conferred by the charter: *In re Long Island Railroad Co.*, 19 Wend. 37; *Evans v. Philadelphia Club*, 50 Penn. St. 107. All other private corporations, however, are vested incidentally with this power. The doubts expressed upon this point in *Fawcett v. Charles*, 13 Wend. 473, have been conclusively set at rest by the later authorities. The cases in which a corporator may be expelled by virtue of the implied power of disfranchisement vested in the corporate body arrange themselves under three principal heads.

1. Where he has committed some offence which bears no immediate relation to his corporate duty or character but is in itself of so infamous a nature as to render the offender unfit to exercise the franchise and associate with honest men.

2. Where he has committed some offence which relates merely to his corporate duty or character, and which amounts to a breach of the condition tacitly or expressly annexed to the franchise.

3. Where he has committed some offence of a mixed nature which is not only contrary to his duty as a corporator, but also infamous in its nature and indictable by the law of the land: *Rex v. Richardson*, 1 Burr. 539; *Fawcett v. Charles*, 13 Wend. 473; *People ex rel. Gray v. Medical Society of the County of Erie*, 24 Barb. 570; *People ex rel. Thacher v. N. Y. Commercial Association*, 18 Abb. Pr. 271; *Commonwealth v. St. Patrick's Ben. Soc.*, 2 Binn. 441; *Evans v. Philadelphia Club*, 50 Penn. St. 107; *People ex rel. Page v. Board of Trade*, 45 Ill. 112; *State ex rel.*

*Graham v. Chamber of Commerce*, 20 Wis. 63; *State ex rel. Danforth v. Kuehn*, 34 Wis. 229.

The corporation cannot proceed to disfranchise a member for the first of these causes until he has been indicted therefor by the civil authorities and convicted by a jury: Wilcock on Mun. Corp., sect. 646; *Leech v. Harris et al.*, 2 Brewst. 571.

The corporation may proceed to disfranchise a member for the second of these causes without such prior indictment and conviction: Wilcock on Mun. Corp., sect. 639. Whether a corporation may disfranchise for the third of these causes without a prior indictment and conviction seems doubtful. Mr. Wilcock inclines to believe that it cannot: Wilcock on Mun. Corp., sect. 640. But see *contra*, *People ex rel. Thacher v. N. Y. Commercial Association*, 18 Abb. Pr. 271.

The breach of a member's corporate duty is by far the most frequent cause for expulsion. Every person who becomes a member of a corporation impliedly undertakes to do or to say nothing which shall be injurious to the interests of the body. If he does, his corporate rights are justly forfeited, and he may properly be disfranchised. The implied right of disfranchisement for breach of corporate duty is in some corporations affected by the provisions of the by-laws. In many instances, it is true, these are simply declaratory in their nature, and specify as causes of disfranchisement offences which would of themselves, without any special provision, authorize the corporation to exercise its expelling powers. Sometimes, however, they prescribe new duties for the corporators, a breach of which would not of itself constitute valid ground for disfranchisement and then annex that penalty in case of such breach. The validity of such by-laws, and of course therefore of all disfranchisements effected under them, is to be determined by various considerations. The by-law must be in its nature reasonable: *People ex rel. Gray v. Medical Society of the County of Erie*, 24 Barb. 570; *Hibernia Fire Engine Co. v. Commonwealth*, 93 Penn. St. 264; *Dawkins v. Antrobus*, L. R., 17 Ch. Div. 615, and must not be opposed to public policy: *People ex rel. Doyle v. N. Y. Benevolent Society*, 3 H. n. 361; *People ex rel. Gray v. Medical Society of the County of Erie*, 24 Barb. 570. The breach of the duties imposed by it must also appear to be in its nature clearly injurious to the interests of the corporation. A by-law authorizing expulsion for non-compliance with mere minor and

unimportant regulations is void: *Evans v. Philadelphia Club*, 50 Penn. St. 107.

A deviation from the duties prescribed by the by-laws before becoming a member of a corporation, will in no case constitute a valid ground for disfranchisement: *People ex rel. Bartlett v. Medical Society*, 32 N. Y. 187.

The following decisions as to what are and what are not sufficient causes for the exercise of the implied power of disfranchisement by corporations of various kinds will best illustrate this branch of the subject:

COMMERCIAL ASSOCIATIONS.—These are usually established to promote just and equitable principles in trade, to encourage a high standard of commercial honor and credit, and to facilitate the transaction of business. The following offences when particularly specified by the by-laws as causes of disfranchisement have been held to be properly visited with that penalty. Failure promptly to comply with the terms of a contract: *People ex rel. Page v. Board of Trade*, 45 Ill. 112; even though it be made with a person not a member of the association: *Dickenson v. Chamber of Commerce*, 29 Wis. 45; or though it be purely parol and therefore not enforceable at law by virtue of the provisions of the Statute of Frauds: *Id.* The obtaining of goods under false pretences, though from a non-member outside the jurisdiction of the corporation: *People ex rel. Thacher v. N. Y. Commercial Association*, 18 Abb. Pr. 271. The carrying on of business outside the rooms of the association either before or after ordinary business hours: *State ex rel. Cuppel v. Chamber of Commerce*, 47 Wis. 670. It seems also that where there is a special provision to that effect in the by-laws insolvency will form a valid cause for suspension from such associations: *Moxey's Appeal*, 9 Weekly Notes Cases 441.

The following offences have been held not to furnish sufficient ground for disfranchisement. The institution of legal proceedings to prevent the sale of a seat claimed by the relator to whose title an adverse decision had been rendered by the board of managers: *People ex rel. Elliott v. N. Y. Cotton Exchange*, 8 Hun 216. The refusal to submit to the arbitration of a board after having once brought suit in the civil courts, although the by-laws specially provided that if any member should fail to submit to such arbitra-

tion he might be disfranchised: *State ex rel. Graham v. Chamber of Commerce*, 20 Wis. 63. The refusal to pay an award rendered by a board of arbitrators, the by-laws vesting jurisdiction in that board only in case of wilful and fraudulent breach of conduct, and the right of appeal to the whole body which was secured by said by-laws having been denied on the question of jurisdiction merely without going into the full merits of the controversy: *Savannah Cotton Exchange v. State*, 54 Ga. 668. See also *White v. Brownell*, 2 Daly 329.

**BOARDS OF FIRE UNDERWRITERS.**—These corporations are established to preserve uniform rates of insurance. Apart from all provisions in the by-laws the charging of lower rates than those established by the association constitutes valid ground for disfranchisement: *People ex rel. Pinckney et al. v. N. Y. Board of Fire Underwriters*, 7 Hun 248.

**MEDICAL SOCIETIES.**—These associations are generally established for the purpose of regulating and improving the practice of physic and surgery and for promoting professional intercourse among their members. The following offences have of themselves been held valid causes for disfranchisement. The selling out of a practice and afterwards returning and resuming business in the same locality to the prejudice of the vendee: *Barrows v. Medical Society*, 12 Cush. 402. The constant vilifying of the society and holding oneself out as ready to practice either as an allopath or a homeopath at the option of the patient: *Ex parte Paine*, 1 Hill 665. The following offences have been held insufficient to warrant expulsion. The presentation to the society on entrance of a diploma insufficient to entitle to membership under the charter of the association: *Fawcett v. Charles*, 13 Wend. 473. The advertisement of a patent instrument, such action being prohibited by a code of professional ethics adopted by the society: *People ex rel. Bartlett v. Medical Society*, 32 N. Y. 187. The reception of a fee less than that prescribed by a tariff adopted by the association, although the by-laws specially provided that for this offence a member might be expelled: *People ex rel. Gray v. Medical Society*, 24 Barb. 270. Becoming surety upon the official bond of a colored person in the state of Georgia, after the War of the Rebellion, or giving bail in said state at said time for a colored person charged with riot: *State v. Georgia Medical Society*, 38 Ga. 608.

BENEFICIAL ASSOCIATIONS.—These are organized for mutual assistance in case of death or sickness. It has been held that it is sufficient cause for disfranchisement from these associations, if a member alters a physician's bill so as to entitle himself to greater aid from the society: *Commonwealth v. Philanthropic Society*, 5 Binn. 486. And where that penalty is specially affixed by the by-laws, if he voluntarily enlists as a soldier for active service: *Franklin Beneficial Association v. Commonwealth*, 10 Penn. St. 357; or feigns sickness in order to obtain aid: *Society for the Visitation of the Sick v. Commonwealth*, 52 Penn. St. 125; or fails to pay his dues: *Hussey v. Gallagher*, 61 Ga. 86; *Hibernia Fire Engine Co. v. Commonwealth*, 93 Penn. St. 264; *contra*, *People ex rel. Pulford v. Fire Department*, 31 Mich. 458. The following offences have, on the contrary, been deemed insufficient cause for disfranchisement, although that penalty was specially annexed to them by the by-laws. The vilifying of a fellow member: *Commonwealth v. St. Patrick's Ben. Soc.*, 2 Binn. 440. Neglect to take the sacrament according to the specified form of a certain religious body, where the corporation is in its nature purely secular: *People ex rel. Schmitt v. St. Franciscus Beneficial Society*, 24 How. Pr. 216. The failure to pay dues after an illegal suspension: *People ex rel. Doyle v. N. Y. Benevolent Society*, 3 Hun 361. And in no event when a member has once been fined for the commission of an offence can he afterwards be expelled for the same cause: *Id.*

SOCIAL CLUBS.—In *Evans v. Philadelphia Club*, 50 Penn. St. 107, it was held that the striking of one member by another in the bar room of the club upon considerable provocation was not sufficient cause for disfranchisement, under a by-law providing for expulsion in case of disorderly conduct. This case was, however, decided by a divided court and carries no great weight. In the recent case of *Dawkins v. Antrobus*, L. R., 17 Ch. Div. 615, where the expulsion was from an unincorporated society, Sir GEORGE JESSEL, the Master of the Rolls, indicated it as his opinion that the publication of a libellous pamphlet on another member of the club and sending the same to him anonymously would not have been deemed adequate cause for disfranchisement had the club been incorporated. Lord Justice JAMES, however, thought otherwise. See *Hopkinson v. Marquis of Exeter*, L. R., 5 Eq. 63; *Labouchere v. Earl of Wharnclyffe*, L. R., 13 Ch. Div. 346.

EDUCATIONAL AND CHARITABLE INSTITUTIONS.—A member of the faculty of such institutions may be expelled for neglect of duty: *Murdoch's Case*, 7 Pick. 303; but not for mere jealousy of other members of the faculty, or for a settled difference of opinion from them as to the proper methods of instruction: *Id.*

A trustee of such institutions may be expelled or charging the corporation with money never paid: *Commonwealth v. Guardians of the Poor*, 6 S. & R. 469. But not for mere misappropriations of the funds: *Id.*; or for disrespect to his associates, or for failure to serve on a single committee to which he had been appointed: *Fuller v. Plainfield Academic School*, 6 Conn. 532.

The inmates of such institutions may in pursuance of the provisions of the by-laws be properly expelled for gross disorder: *People ex rel. Newman v. Sailors' Snug Harbor*, 54 Barb. 532.

RELIGIOUS SOCIETIES.—The charters of these societies usually provide that the corporators thereof shall consist only of such persons as are members of a specified religious body: *German Reformed Church v. Seibert*, 3 Barr 282. But this is not always the case: *People ex rel. Dilcher v. St. Stephens' Church*, 53 N. Y. 103. Where the charter does so provide it is exclusively for the religious body of itself by means of its regularly organized ecclesiastical courts to determine who are its members and who are not, and these courts may therefore of course deprive any one of his corporate rights for purely ecclesiastical offences, such as non-conformity, contumacy or immorality. Their decisions upon these points will never be reviewed by the civil tribunals. In cases, however, where they undertake to exercise a like power when the offence in question is not purely ecclesiastical in its nature, a grave question arises as to whether they have not overstepped the limits of their authority. Could, for example, an ecclesiastical court disfranchise a member for the use of alcoholic drinks or tobacco? Common sense would clearly seem to dictate that they could not, but authority is lacking upon this subject. See note to *Gartin v. Penick*, 9 Am. Law Reg. (N. S.) 210.

Where the charter makes no such provision as that above described it seems that a religious corporation has no power to disfranchise a member for mere moral delinquency: *People ex rel. Dilcher v. St. Stephens' Church*, 53 N. Y. 103.

In Illinois and Maryland somewhat different principles obtain with reference to the right of disfranchisement from private cor-

porations from those above laid down. All associations for moral, social or beneficial purposes are deemed, though incorporated, to stand as regards their powers of expulsion upon the same footing as unincorporated societies. They are left therefore to enforce their own rules and regulations as they see fit, and may disfranchise for whatever cause they may deem proper: *People ex rel. Rice v. Board of Trade*, 80 Ill. 134, overruling *People ex rel. Page v. Board of Trade*, 45 Ill. 112; *Anacosta Tribe of Red Men v. Murbach*, 13 Md. 91. The law upon this point in Illinois is by no means, however, to be considered as settled: *Baxter v. Board of Trade*, 83 Ill. 147; *Sturges v. Board of Trade*, 86 Ill. 441.

See as to the rights of unincorporated societies in this respect: *Innes v. Wylie et al.*, 1 Carr. & K. 257; *Blisset v. Daniel*, 10 Hare 493; *Hopkinson v. Marquis of Exeter*, L. R., 5 Eq. 63; *Fisher v. Keane*, L. R., 11 Ch. Div. 353; *Labouchere v. Earl of Warnecliffe*, L. R., 13 Ch. Div. 346; *Dawkins v. Antrobus*, L. R., 17 Ch. Div. 615; *White v. Brownell*, 2 Daly 329; *People ex rel. Dileher v. St. Stephens' Church*, 53 N. Y. 103; *Moxey's Appeal*, 9 Weekly Notes (Phila.) 441; *Smith v. Neilson*, 18 Vt. 511.

In England it seems to be held that a defect of original qualification for membership in a corporation constitutes good ground for disfranchisement: *Regina v. Saddlers' Co.*, 10 H. L. Cas. 404; *Fawcett v. Charles*, 13 Wend 473. In America the contrary has been held to be the law.

## II. In what manner must a member be disfranchised.

In order legally to disfranchise a member of a corporation the proceedings must be taken in a certain specified manner. If the charter provides what that manner shall be, its requirements must be strictly complied with, otherwise the attempted disfranchisement will be void: *Commonwealth v. Pike Beneficial Society*, 8 W. & S. 247. If there be no express charter provision the method of disfranchisement may be regulated by the by-laws: *State v. Trustees of Vincennes University*, 5 Ind. 77; *Commonwealth v. German Society*, 15 Penn. St. 251. And these by-laws may be so framed as to limit the implied power of expulsion vested in the corporation: *People ex rel. Godwin v. American Institute*, 44 How. Pr. 468. Where the terms of the by-laws prescribe the method of expulsion, that method must be strictly followed by the society: *Fisher v. Keane*, L. R., 11 Ch. Div. 353; *Labouchere v. Earl of Warnecliffe*, 13 Id. 346; *Commonwealth v. Guardians*

of the Poor, 6 S. & R. 469; *Washington Beneficial Society v. Bacher*, 20 Penn. St. 425; *Society for the Visitation of the Sick v. Commonwealth*, 52 Id. 125; *Savannah Cotton Exchange v. State*, 54 Ga. 668; *Weber et al. v. Zimmerman*, 22 Md. 156; *People ex rel. Godwin v. American Institute*, 44 How. Pr. 468; *Southern Plank Road Co. v. Hixon*, 5 Ind. 165. Unless there be an express provision in the charter no member of a corporation can be disfranchised without notice to him, and unless a fair opportunity be given him to defend himself against the charges that have been preferred: *Wilcock on Mun. Corp.*, sects. 691, 700: *Bagg's Case*, 11 Rep. 99; *Innes v. Wylie et al.*, 1 Carr. & C. 257; *Blisset v. Daniel*, 10 Hare 493; *Fisher v. Keane*, L. R., 11 Ch. Div. 353; *People ex rel. Dilcher v. St. Stephens' Church*, 53 N. Y. 103; *People ex rel. Doyle v. N. Y. Benevolent Society*, 3 Hun 361; *Wachtel v. Noah Widows' and Orphans' Beneficial Society*, 84 N. Y. 28; *People ex rel. Schmitt v. St. Francisus Benevolent Society*, 24 How. Pr. 216; *Commonwealth v. Penna. Ben. Soc.*, 2 S. & R. 141; *Commonwealth v. German Society*, 15 Penn. St. 251; *Diligent Fire Engine Co. v. Commonwealth*, 75 Id. 291; *Dubree v. Reliance Fire Engine Co.*, 1 Weekly Notes (Phila.) 524; *Riddell v. Harmony Fire Engine Co.*, 8 Phila. 311; *Murdock's Case*, 7 Pick. 303; *Murdock v. Phillips Academy*, 12 Pick. 244; *Sleeper v. Franklin Lyceum*, 7 R. I. 523; *Sibley v. Carteret Club of Elizabeth*, 40 N. J. Law 295; *Southern Plank Road Co. v. Hixon*, 5 Ind. 165; *State v. Adams*, 44 Mo. 570; *People v. Fire Department*, 31 Mich. 458; *State v. Chamber of Commerce*, 47 Wis. 670. And so far has this doctrine as to notice been carried that it has been held irregular for a committee of the corporation who have been appointed to inquire into an alleged offence to proceed without notifying a delinquent, and an expulsion founded upon the report of such committee after due notice to the offending member has been pronounced void: *La-bouchere v. Earl of Wharnclyffe*, L. R., 13 Ch. Div. 346. The conferring of express power by the charter upon a corporation to disfranchise its members does not do away with the necessity of notice: *Delacey v. Neuse River Navigation Co.*, 1 Hawks (N. C.) 274. And a by-law authorizing expulsion without notice is simply void: *People v. Fire Department*, 31 Mich. 458.

The mere posting of the name of the offending member in the corporate premises is not sufficient notice: *Sibley v. Carteret Club of Elizabeth*, 40 N. J. Law 295. The notice must, in the absence of

any provision in the charter or by-laws, be a personal one: *Wachtel v. Noah Widows' and Orphans' Ben. Soc.*, 84 N. Y. 28.

Provision may, however, be made by the by-laws for other methods of transmitting the notice, as, for example, through the mail. A mere change of residence does not excuse the failure to serve a notice, even though there be a provision in the by-laws requiring each member to notify the society whenever he makes such change, under penalty of a fine: *Id.* Nor will a long and continuous violation of the rules of the society excuse the service of the notice: *Harmstead v. Washington Fire Co. et al.*, 8 Phila. 331.

The notice may properly be served on Sunday if the meetings of the corporation are usually held on that day: *People ex rel. Corrigan v. Young Mens' Father Matthew Ben. Soc.*, 65 Barb. 357: but must be served a reasonable time before the meeting convened to pass upon the question of the expulsion of the member, and must specify the time and place of such meeting: Wilcock on Mun. Corp. 692: *Murdock v. Phillips Academy*, 12 Pick. 244.

The notice must contain a reasonably specific statement of the charges preferred against the member, though they need not be set out with the nicety and precision of an indictment: Wilcock on Mun. Corp. 694; *Murdock's Case*, 7 Pick. 303; *Murdock v. Phillips Academy*, 12 Id. 244; *Fuller v. Plainfield Academic School*, 6 Conn. 532.

If a member appears without notice and defends or admits the charges made against him, the necessity for notice is, of course, dispensed with: Wilcock on Mun. Corp. 695; *Moxey's Appeal*, 9 Weekly Notes (Phila.) 441; *Commonwealth v. Penna. Ben. Society*, 2 S. & R. 141. In order to enable a member to prepare his defence, access to all the books and papers of the corporation should be afforded him, and a refusal to allow him to inspect these will invalidate his subsequent expulsion: *Murdock v. Phillips Academy*, 12 Pick. 244.

The power of disfranchisement is said to be reposed at common law in the whole corporate body: Grant on Corp. 240; Wilcock on Mun. Corp. 629; *Weber v. Zimmerman*, 22 Md. 156. It is, therefore, held by some authorities that this power cannot be reposed in a select body: *State ex rel. Graham v. Chamber of Commerce*, 20 Wis. 63; unless there be a provision to that effect in the charter: *State v. Chamber of Commerce*, 47 Wis. 670.

It has been held, however, in many instances that it is compe-

tent for a corporation by its by-laws to delegate this power to a select number of its members: Wilcock on Mun. Corp. 634: *Hussey et al. v. Gallagher*, 61 Ga. 86. See *Green v. African M. E. Society*, 1 S. & R. 254. And in other cases the validity of expulsions by such select bodies acting in pursuance of the by-laws has been assumed without controversy: *People ex rel. Thacher v. N. Y. Commercial Association*, 18 Abb. Pr. 271; *White v. Brownell*, 2 Daly 329; *People ex rel. Page v. Board of Trade*, 45 Ill. 112. But a by-law cannot vest the power of disfranchisement in a single officer who is made to act at once as witness and as judge: *People ex rel. Pulford v. Fire Department*, 31 Mich. 458; *Hibernia Fire Engine Co. v. Commonwealth*, 93 Penn. St. 24.

The body in whom the power of disfranchisement is vested must also not be prejudiced against the offending member. It cannot consist, therefore, of the very men against whom the offence in question has been committed: *Smith v. Nelson*, 18 Vt. 511; and where a select body has illegally proceeded to expel a member without notice or trial it cannot afterwards retrace its steps and expel him in due form: *Murdock v. Phillips Academy*, 12 Pick. 244. Where the power of expulsion is reposed in the whole corporate body, each member should be notified of the time and place of the meeting at which the trial is to be held, and also of the business about to be transacted: *Weber v. Zimmerman*, 22 Md. 156. The meeting may be held on Sunday if the corporation has been accustomed to meet on that day: *People ex rel. Corrigan v. Young Mens' Father Matthew Ben. Soc.*, 65 Barb. 357. The trial must be a fair and open one: *State v. Adams*, 44 Mo. 570; *Murdock's Case*, 7 Pick. 303. The accused member must be allowed a full hearing, the privilege of counsel and an opportunity to object to the relevancy or competency of any evidence offered against him: *Murdock v. Phillips Academy*, 12 Pick. 244. If he remains silent or fails to appear, the charge must, nevertheless, be satisfactorily proved: Wilcock on Mun. Corp. 702; *People ex rel. Corrigan v. Young Mens' Father Matthew Ben. Soc.*, 65 Barb. 357. Finally, a solemn sentence must be pronounced upon the answers and proofs adduced: *Murdock v. Phillips Academy*, 12 Pick. 244.

Any deviation from the foregoing course of proceeding is fatal, and the defect will not be remedied by an affirmation of the sen-

tence by an appellate tribunal constituted by the corporation, which has acted with perfect regularity: *Id.*

Where a member has once been regularly tried by a corporation and acquitted, it seems that he cannot afterwards be again tried and expelled for the same offence: *Commonwealth v. Guardians of the Poor*, 6 S. & R. 469. But where a member has been irregularly tried and expelled there is nothing to prevent the corporation from reinstating him in his rights and afterwards proceeding to try and expel him in due process of law: *State ex rel. Cuppel v. Chamber of Commerce*, 47 Wis. 670. An actual formal vote of the body vested with the right of disfranchisement is necessary in order to deprive a member of his corporate rights: *Sibley v. Carteret Club of Elizabeth*, 40 N. J. L. 295; *State ex rel. Linley v. Bryce*, 7 Ohio 414; *Harmstead v. Washington Fire Co. et al.*, 8 Phila. 331. Even where the charter expressly vests in the president and directors power to erase a member's name in case he commits certain specified offences it seems that definite action by the body corporate is necessary to disfranchise: *Delacey v. Neuse River Navigation Co.*, 1 Hawks (N. C.) 274. See also *Doremus v. Dutch Reformed Church*, 2 Green Ch. (N. J.) 332.

The right of membership in a corporation is never lost by mere non-user: *State v. Trustees of Vincennes University*, 5 Ind. 77. Unless indeed there be a specific provision to that effect in the charter: *Croker v. Old South Society*, 106 Mass. 489.

III. In case of an illegal disfranchisement what remedy will the courts afford.

Wherever, as has been said, a member of a corporation has been illegally disfranchised he may apply to the courts for redress and protection. The courts will, in every case, consider the regularity of the method in which the disfranchisement has been effected, and if there be any departure from the course of proceedings above indicated will afford instant relief. They will also in every case inquire as to the offence which has constituted the cause for disfranchisement. The fact that the offence has been committed is conclusively settled by the finding of the corporation: see *State ex rel. Cuppel v. Chamber of Commerce*, 47 Wis. 670. But whether the commission of the offence does or does not constitute sufficient ground for disfranchisement is for the court.

In those cases where the offence does not consist of the violation of a by-law but merely of some alleged breach of a corporator's

implied duty, the court will simply consider whether it is or is not injurious to the interests of the corporation, and the affording or withholding of relief will be regulated accordingly: *Fawcett v. Charles*, 13 Wend. 473; *People ex rel. Dilcher v. St. Stephens' Church*, 53 N. Y. 103; *People ex rel. Elliott v. N. Y. Cotton Exchange*, 8 Hun 216; *Commonwealth v. Philanthropic Society*, 5 Binn. 486; *Ex parte Paine*, 1 Hill 665; *Commonwealth v. Guardians of the Poor*, 6 S. & R. 469; *Murdock's Case*, 7 Pick. 303; *Barrows v. Medical Society*, 12 Cush. 402; *Fuller v. Plainfield Academic School*, 6 Conn. 532; *Savannah Cotton Exchange v. State*, 54 Ga. 668. In those cases where the offence does consist of the violation of a by-law the court will consider (1) whether the duties imposed by that by-law are reasonable and proper, and (2) whether the violation of them is so far injurious to the interests of the corporation as to warrant the imposition of the penalty of expulsion: *People v. N. Y. Benevolent Society*, 3 Hun 361; *People v. N. Y. Board of Underwriters*, 7 Id. 248; *People v. Medical Society*, 32 N. Y. 187; *People v. Medical Society*, 24 Barb. 570; *People v. Sailors' Snug Harbor*, 54 Id. 532; *People v. St. Francis Benevolent Society*, 24 How. Pr. 216; *Commonwealth v. St. Patrick's Ben. Soc.*, 2 Binn. 440; *Franklin Ben. Association v. Commonwealth*, 10 Penn. St. 357; *Evans v. Philadelphia Club*, 50 Id. 107; *Society for the Visitation of the Sick v. Commonwealth*, 52 Id. 125; *Hibernia Fire Engine Co. v. Commonwealth*, 93 Id. 264; *People v. Board of Trade*, 45 Ill. 112; *Pulford v. Fire Department*, 31 Mich. 458; *Dickenson v. Chamber of Commerce*, 29 Wis. 45; *State v. Chamber of Commerce*, 20 Id. 63; *State v. Chamber of Commerce*, 47 Id. 670; *State v. Georgia Medical Society*, 38 Ga. 608; *Hussey et al. v. Gallagher*, 61 Id. 86.

The courts will also construe the true meaning of the by-laws: *Franklin Beneficial Society v. Commonwealth*, 10 Penn. St. 357; *People v. N. Y. Commercial Association*, 18 Abb. Pr. 271; *State v. Chamber of Commerce*, 20 Wis. 63; *Dickenson v. Chamber of Commerce*, 29 Id. 45; and will decide whether the specific offence assigned as cause for disfranchisement comes within the meaning of their provisions: *People v. Sailors' Snug Harbor*, 54 Barb. 532; *State v. Georgia Medical Soc.*, 33 Ga. 608. Of course if the duties imposed by the by-laws be not reasonable and proper, or if the breach of them be not injurious to the interests of the cor-

poration or if the offence in question under a just interpretation of the by-laws does not amount to such a breach, the disfranchisement cannot be maintained. And even if the by-law in general be valid and the specified offence within its terms, yet if that particular offence be of such a character as cannot be deemed injurious to the interests of the corporation, the expulsion will not be sustained: *Evans v. Philadelphia Club*, 50 Penn. St. 107; *People v. Mechanics' Aid Soc.*, 22 Mich. 86. Where a person has been illegally disfranchised from a corporation, the proper remedy is a writ of mandamus to restore him to his rights: Wilcock on Mun. Corp. 96; *Bagg's Case*, 11 Rep. 99; *People v. Medical Soc.*, 24 Barb. 570; *Evans v. Philadelphia Club*, 50 Penn. St. 107; *Hibernia Fire Engine Co. v. Commonwealth*, 93 Id. 264; *Sibley v. Carteret Club of Elizabeth*, 40 N. J. L. 295; *Union Church of Africans v. Sanders*, 1 Houst. 100; *Fuller v. Plainfield Academic School*, 6 Conn. 532; *People v. Board of Trade*, 45 Ill. 112; *People v. Mechanics' Aid Soc.*, 22 Mich. 86; *Delacey v. Neuse River Navigation Co.*, 1 Hawks (N. C.) 274; *State v. Georgia Medical Soc.* 33 Ga. 608; *Hussey et al. v. Gallagher*, 61 Id. 86; *State v. Lusitanian Portuguese Soc.*, 15 La. Ann. 73. But in Kentucky, under the statutes there in force, a writ of mandamus cannot be granted to restore a member of a private corporation: *Cook v. College of Physicians*, 9 Bush 542.

The courts are always unwilling to interfere in the matters of private corporations: *Hussey et al. v. Gallagher*, 61 Ga. 86; and hence will refuse to grant a writ of mandamus where the desired object may be obtained without serious difficulty and without the aid of the court: *Harrison et al. v. Simonds et al.*, 44 Conn. 318.

Any person invoking the aid of the court must, therefore, in order to obtain the writ, show that he has an undoubted grievance, and that he has no other adequate remedy. He must, therefore, prove that he has been duly elected a member of the corporation, and if that body have exceeded their chartered powers in electing him he has no standing in court: *Diligent Fire Engine Co. v. Commonwealth*, 75 Penn. St. 291. He must also show beyond peradventure that he has been disfranchised: *People v. St. Stephens' Church*, 53 N. Y. 103. And the mere fact that he has been prevented from voting or speaking at several successive corporate meetings will not in itself be deemed conclusive evidence of his disfranchisement: *Crocker v. Old South Society*, 106 Mass. 489.

If an opportunity is afforded to him to appeal to another tribunal constituted by the corporation, he must do so before he has recourse to the courts: *White v. Brownell*, 2 Daly 329; *German Reformed Church v. Seibert*, 3 Penn. St. 282.

Where a person illegally disfranchised from a corporation has brought suit and recovered damages for the injury done him, he will be deemed to have waived his right to a mandamus: *State v. Lipa*, 28 Ohio St. 668.

The practice is for the court to issue in the first place a writ of alternative mandamus: *Sleeper v. Franklin Lyceum*, 7 R. I. 523. The return to this writ must be certain and specific, containing a perfect justification of the expulsion, and setting out at length the cause thereof and the mode in which it has been effected: *Bagg's Case*, 11 Rep. 99; *People v. St. Franciscus Ben. Soc.*, 24 How. Pr. 216; *Green v. African M. E. Soc.*, 1 S. & R. 254; *Society for the Visitation of the Sick v. Commonwealth*, 52 Penn. St. 125; *People v. Mechanics' Aid Soc.*, 22 Mich. 86. If the return be defective an opportunity of amending it will not be afforded: *People v. American Institute*, 2 N. Y. Leg. Obs. 170.

On the filing of the return the relator may either rely upon its insufficiency or traverse it by proof. But after having adopted one of these courses and failed, he cannot afterwards resort to the other: *State v. Lusitanian P. Soc.*, 15 La. Ann. 73. Where the final decision is in favor of the relator, a writ of peremptory mandamus is issued to restore him to all his corporate rights.

Attempts have from time to time been made to invoke the aid of courts of equity to restrain by injunction corporate bodies from illegally disfranchising their members. Such attempts have, however, invariably failed, the courts being of opinion that they have no jurisdiction in the premises: *Gregg v. Massachusetts Medical Soc.*, 111 Mass. 185; *Sturges v. Board of Trade*, 86 Ill. 441. Attempts have also been made to induce these courts to restore illegally disfranchised members by mandatory injunction. These also have failed: *Fisher v. Board of Trade*, 80 Ill. 85. The mere circumstance that the complainant may be deprived of intermediate profits earned by the corporation will not entitle him to this relief, at least where a proceeding by mandamus has been instituted to test his right and is still pending undetermined: *Baxter v. Board of Trade*, 83 Ill. 147.

LAWRENCE LEWIS, Jr.

## RECENT ENGLISH DECISIONS.

*Crown Cases Reserved.*

## REGINA v. LOVELL.

It is larceny for a person to demand and receive by intimidation and threats an excessive overcharge for work done for the party paying, as, 5s. 6d. for a fair charge of 1s. 3d.

*Regina v. McGrath*, L. R., 1 C. C. R. 205, affirmed.

THE prisoner was tried before the chairman of the Worcestershire Quarter Sessions on an indictment which charged him, in the first count, with stealing the sum of 5s. 6d., the property of Eliza Grigg, and, in the second count, with demanding with menaces from the said Eliza Grigg the sum of 5s. 6d., with intent to steal the same. The facts were these :

The prisoner was a travelling grinder. He ground two pairs of scissors for the prosecutrix, for which he charged her 4d. She then handed him six knives to grind. He ground them and demanded 5s. 6d., for the work. She refused to pay the amount on the ground that the charge was excessive. The prisoner then assumed a menacing attitude, kneeling on one knee, and threatened the prosecutrix, saying, "You had better pay me, or it will be worse for you," and "I will make you pay."

The prosecutrix was frightened, and in consequence of her fears, gave the prisoner the sum demanded. Evidence was given that the trade charge for grinding the six knives would be 1s. 3d. It was contended for the prisoner that as some money was due, the question rested simply on a *quantum meruit*, and that there was no larceny or menacing demand with intent to steal. The chairman overruled the objection, and directed the jury on the authority of *Reg. v. McGrath*, L. R., 1 C. C. R. 205, that if the money was obtained by frightening the owner, the prisoner was guilty of larceny. They found that the money was obtained from the prosecutrix by menaces, and that the prisoner was guilty.

The question for this court was, whether upon the facts stated, he was properly convicted.

No counsel appeared.

The court, Lord COLERIDGE, C. J., LINDLEY, HAWKINS, LOPES  
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and BOWEN, JJ., held that the case was governed by *Reg. v. MacGrath*, and upheld the conviction.

Although larceny generally involves an unlawful *taking*—a trespass—against, or at least without the consent of the owner, yet it is familiar law that fraud and intimidation often supplies the place of force, and assent obtained under such circumstances has no legal effect.

Therefore, it is well settled that if a person, with an existing intent to steal, borrows or hires property, and after having thus obtained possession by consent of the owner, sells the same, or otherwise converts it to his own use, *animo furandi*, he is as much guilty of larceny as if he had acquired possession of the same by force or violence: *State v. Humphrey*, 32 Vt. 569; *Commonwealth v. Barry*, 124 Mass. 325; *Armstrong's Case*, 1 Lew. C. C. 273; *Spence's Case*, Id. 197; *Starlie v. The Commonwealth*, 7 Leigh 752; *State v. Watson*, 41 N. H. 533; *Smith v. The People*, 53 N. Y. 111, and many other cases.

In such cases, however, it seems essential that the fraudulent intent should have existed at the time of acquiring the possession. It is a substitute for unlawful taking, and, therefore, if the property was acquired without wrongful intent, and afterwards, for the first time, the intent to steal arises, an unlawful conversion would not then amount to larceny, whatever other crime it might be: *Regina v. Cole*, 2 Cox C. C. 340; *Charlewood Case*, 2 East P. C. 689; *Semple's Case*, Id. 691.

For similar reasons intimidation, threats, &c., have been held equivalent

to fraud or stratagem in obtaining possession, as held in the principal case, and many others. Thus in *Reg. v. MacGrath*, 11 Cox C. C. 347, a woman standing in a mock auction room was falsely charged by the auctioneer with having bid 26s. for an article being sold, and being threatened with arrest if she did not pay the 26s. did so, through fear, and actually carried away the article itself. But the auctioneer was held guilty of larceny of the 26s. And see *Taplin's Case*, 2 East P. C. 712; *Zink v. The People*, 6 Abb. N. C. 413.

But it must be confessed this is carrying the doctrine much farther than the cases upon fraud do; for in the principal case and *MacGrath's Case*, not only did the prosecutor part with his *possession*, but also with the property itself. He intended, through fear no doubt, but still intended to part with his *property* in the thing transferred, whereas in the case of fraud, &c., it is universally agreed that if a person is induced by fraud to part with his property, or title in the thing delivered, and not merely with his temporary possession, the person acquiring it is not, by reason of the fraud, guilty of larceny, but only of obtaining goods or money under false pretences, or, perhaps, also of cheating at common law: *Ross v. The People*, 5 Hill 294; *Smith v. The People*, 53 N. Y. 111; *Lewer v. The Commonwealth*, 15 S. & R. 93; *Commonwealth v. Barry*, 124 Mass. 325, and many other cases.

EDMUND H. BENNETT.