In *The Comm'th* v *The German Society*, 3 H. 251, a society for "mutual support and assistance," the cause of disfranchisement was that the member had assisted, as president of the *society*, *in defrauding it out* of fifty cents, and had defamed and injured the society in public taverns. It was held not to be a sufficient cause, and he was restored.

When the charter of the Butchers' Beneficial Association was presented to our Supreme Court, it was rejected, on the ground, among others, that it allowed the association to expel members who should be "guilty of actions which may injure the association." This, said the Chief Justice, we cannot approve; for it gives the association an entirely indefinite power over its members. For any action which may injure them they may expel, and therefore they may expel a member for becoming insolvent. It is totally incompatible with the whole spirit of our institutions, to clothe any body with such indefinite power over its members; for it is equivalent to socialism, and is a rejection of all individual rights within the association. It is common in such charters to found the right of expulsion on the fact that the member has been found guilty of some crime on a trial in court, and this is quite proper. 11 Harris' R. 151.

In the case of *The Beneficial Association of Brotherly Unity*, 2 Wr. 299, a charter was rejected because it gave a majority the power to expel any member "guilty of an offence against the law"—the court holding that a constitution that puts all power over rights in the hands of a majority is no constitution at all.

Gathering now, into one group, the principles of decision that lie scattered through the authorities, they may be stated thus:

1. That the power of amotion for adequate cause, is an inherent incident of all corporations, whether municipal or private, except, perhaps, such as are literary or eleemosynary, but the exercise of this power does not affect the private rights of the corporator in the franchise.

2. That the power of disfranchisement which does destroy the member's franchise, must, in general, be conferred by statute, and is never sustained as an incidental power, without statute grant, except in two cases—first, on conviction of the member in a court of justice of an infamous offence—and second, where he has committed some act *against the society* which tends to its destruction or injury.

3. That the power to make by-laws is incidental to corporations, and generally expressly conferred by statute; but by-laws which vest in a majority the power of expulsion for minor offences, are, in so far, void, and courts of justice will not sustain expulsions made under them.

4 In joint stock companies, "or indeed, in any corporation owning property" (Angell & Ames on Corporations, § 410), no power of expulsion can be exercised unless expressly conferred by the charter.

With these principles in view, I take up the charter of the Philadelphia Club, and find that it was incorporated on the 8th May, 1850, under the name of the "Philadelphia Association and Reading Room," (afterwards changed to that of the "Philadelphia Club,") with authority to "elect officers, to establish by-laws for their government, and to hold real estate, the yearly value of which shall not exceed three thousand dollars;" but there is no power either of amotion or disfranchisement expressly conferred. They make no pretence to this power by prescription.

The by-laws established by the corporation provide for the election of officers, and the order of proceedings, and fix "the entrance money" to be paid by resident members at $100, with a semi-annual subscription of $20; and for non-resident members at $50 with a semi-annual subscription of $15. The LXV., LXVI., and LXVII. by-laws enact that "if the conduct of a member be disorderly, or injurious to the interests of the club, or contrary to its by-laws," he shall be requested to resign, and if the request be disregarded, the board shall refer the matter to the next stated meeting of the club, and "at such meeting the circumstances of the case shall be considered, and the member may be expelled."

The Relator became a member of the club in 1848, and it is not alleged that he has failed to *pay any of his dues*, or perform any of his duties to the club, but the return alleges that on "the evening of the 24th of February, 1863, the defendant was guilty of breaking the 65th by-law by having an altercation within the walls of the club-house with Samuel B Thomas, and by striking him a blow." For this he was expelled.

Now, undoubtedly, such conduct was disorderly; for though the objects and purposes of the society are not set forth in the charter, it is said to be a club for the cultivation of social relations, and these are friendly and kind relations, and are not promoted by such conduct as is imputed to the relator. But does a single instance of disorderly conduct justify disfranchisement? It is not alleged that the relator is a quarrelsome person, or habitually disorderly. On the contrary, it was admitted in argument that he is a respectable gentleman, and it is shown that when the offence occurred he was sitting in the bar-room of the club house in quiet and friendly conversation with another person, when Thomas entered and uttered defamatory words which the Relator understood to be applied to himself. It was therefore an assault upon Thomas provoked by himself. It was not an interruption of any deliberations or proceedings of the club in a state of organization—it occurred not in a reading-room, or an eating-room, nor at a card or billiard-table, but in what is called the office or bar-room of the house.

I look upon the occurrence as disorderly and injurious to the interest of the club, within the meaning of the 65th by-law, but as one of those "minor offences," of which Mr Willcock speaks, and for which a majority have no power, even under the by-laws, to disfranchise a member. And upon the doctrine of the cases I have referred to, I hold the by-law void so far as it inflicts this extreme penalty for such an offence. I would be very sorry to say that anything short of a statute could confer on a majority of the members of any corporation power to expel a fellow member for merely disorderly conduct. Talking or whispering in a reading-room, or wandering from the question in debate, or interrupting another when he is speaking, and very many mere breaches of good manners are disorderly, and injurious to such a club, and fit to be visited by reprimands and fines, but are not such offences against corporate duty as forfeits the franchise. Unless this unhappy occurrence be viewed through an atmosphere of passion and prejudice that shall distort and magnify its proportions, it must be regarded as belonging to the class of minor offences, not punishable by expulsion. The Relator's offence was not directed against the society, but against his fellow-member, as in Earle's and Binns' case. The law affords no precedent for punishing an offence between fellow-members by disfranchisement. I am unwilling to make so bad a precedent of the case.

But what is conclusive of this case is, that the corporation possesses property, real and personal, and is at liberty to accumulate more, until an annual revenue of three thousand dollars comes to be enjoyed; and the Relator has purchased and paid for the right to participate in that franchise. It is not a joint stock company at present, for under its by-laws no pecuniary profits are divisible among the members, but it may become so, and whether it does or not, the Relator has a vested interest in its estate, and cannot be deprived of it by the proceedings that were had against him. On this point the authorities are clear, and without conflict. Nothing but an express power in the charter can authorize a money corporation to throw overboard one of its members. I have shown that the act of incorporation contained no such power. On the contrary, it excluded it, for the proviso reads "that nothing herein contained shall be so construed as to authorize said Philadelphia Association and Reading-room to do *any other act or acts* in their corporate capacity than are herein expressed."

For these reasons a peremptory mandamus must be awarded, and because the view I have taken of the case results in this conclusion, it is not necessary for me to discuss the formalities of the proceedings of the club under their by-laws, which led to the expulsion.

Let a peremptory mandamus issue.