franchise of a freeman is wholly for his own benefit, and a private right; a right in the municipality similar to that of a natural subject in the State, of which he ought not to be deprived for any minor offence against his corporate fealty, any more than that for which, as a subject, he ought to be deprived of his franchise as a liegeman. For this reason, all minor corporate offences, *such as improper behaviour to his fellow corporators*, where not punishable by the general law of the land, as well as violations of his corporate duties, ought to be punished by penalties imposed by the ordinances of the municipality and not by disfranchisement. But such offences against the general law, as occasion a forfeiture of all civil rights, import in themselves a forfeiture of the corporate franchise; and offences against the corporation, which tend to its destruction, such as defacing the charters, altering the corporate records so as to destroy the evidence of their title to privileges, or that of the title of his fellow corporators to their franchises are of course causes of disfranchisement."

These observations relate to municipal corporations; but why are they not equally applicable to private corporations? The interest or "freedom" which a member has in a private corporation is as truly a "franchise" as that which any of the burgesses mentioned in Bagg's case, had in the borough of Plymouth, and may often be a much more valuable franchise. Where it has been obtained by the payment of a pecuniary consideration, and property is held in connection with it, it is a vested estate, and certainly ought not to be sacrificed on account of minor offences, which would not be permitted to forfeit individual interests in a municipal corporation. And if a power to disfranchise in a municipal corporation does not exist unless expressly granted, it is very safe to conclude that it is not inherent in a private corporation, and must have an express grant to support it.

The extent to which Bagg's case has been overruled is clearly indicated in Lord Bruce's case, 2 Strange R 819, which was a case of amotion, not disfranchisement, and where it was said "the modern opinion has been that a *power of amotion* is incident to the corporation, though Bagg's case seems contrary" Richardson's case, 1 Burrow's R 517, was amotion from a municipal office—that of Portman of the borough of Ipswich. Lord Mansfield went very fully into the law of corporations, and whilst the amotion was not sustained, he sanctioned, very distinctly, the "modern opinion" referred to in Lord Bruce's case, and stated three sorts of offences for which an officer or a corporator may be discharged:

1. Such as have no immediate relation to his office: but are in themselves of so infamous a nature as to render the offender unfit to execute any public franchise.

2. Such as are only against his oath and the duty of his office as a corporator, and amount to breaches of the tacit condition annexed to his franchise or office.

3 Such as are of a mixed nature, as being an offence not only against the duty of his office, but also a matter indictable at common law.

Of these distinctions, limited originally to municipal corporations, I shall have something to say hereafter, when I come to speak of them in connection with private corporations

In Earle's case, Carthew's R 173, it was held that a member of a corporation cannot be disfranchised except for that which works to the destruction of the body corporate, or of the liberties and privileges thereof, *and not for any personal offence of one member to another.*

Tidderly's case, 1 Siderfin's R 14, was a question of restoring a municipal officer who had voluntarily resigned, and Chief B. Hale held that every corporation had power to receive a resignation, and might, for good cause, remove

These cases are sufficient to reflect the opinion of the English courts on Bagg's case A more full reference to the authorities will be found in the notes to Willcock's chapter on disfranchisement, in his work on Corporations. The result seems to be, that the resolution I quoted from Bagg's case has been so far modified that the power of *amotion* is inherent in the nature of corporations and not dependant upon prescription or charter, but the authorities do not establish the point that corporations have inherent power to *disfranchise* a private member. But Bagg's case is an authority against the power of disfranchisement no farther than the reasonings therein are entitled to respect, for the point of the case had not reference either to private corporations or to the power of disfranchisement. Whilst, therefore, *the very point of the case* may be regarded as overruled, the reasonings, as expounded by Mr Willcock, are such as to commend them to universal acceptance. Where corporations are founded upon private capital, the modern English cases are very unanimous in holding that no stockholder can be disfranchised, and thereby deprived of his interest in the property of the corporation, without an express authority for the purpose in the charter.

In Pennsylvania, *The Commonwealth, ex rel John Binns* v. *The St. Patrick Benevolent Society*, 2 Binn 441, is the leading case. The society, under a power conferred by its charter, made a by-law that vilifying a member by another member should be punished as a crime against the society, by removal from office, fine, or expulsion. Binns having been convicted of grossly vilifying a fellow-member, was expelled therefore under this by-law. The Supreme Court restored him upon mandamus, mainly on the ground that the by-law was not necessary for the good government and support of the affairs of the corporation—that it subjected the rights of membership to the uncertain will of a majority—that "the offence of vilifying a member, or a private quarrel, is totally unconnected with the affairs of the society, and therefore its punishment cannot be necessary for the good government of the corporation" Chief Justice Tilghman, delivering the opinion of the court, quoted Lord Mansfield's three sorts of offences as laid down in Richardson's case, and said Binns' offence did not come within either of them, and he concluded by declaring that "without an express power in the charter, no man can be disfranchised unless he has been guilty of some offence which either affects the interest or good government of the corporation, or is indictable by the law of the land"

In *Fuller* v *The Trustees of the Plainfield Academy*, 6 Conn. R. 532, Judge Digget alluded to the doctrine that a power of amotion is incidental to corporations, but seemed to doubt whether it was applicable to any but municipal corporations, and quoted Judge Story as saying in the Dartmouth College case, that there could be no amotion of the trustees of that institution, and he restored the trustee of the Plainfield Academy who had been expelled for disrespectful and contemptuous language towards his associates, and for neglect of duty as a trustee. "The court," he said, "cannot justify expulsion from office on such charges, what the trustees might have done to one of their number who had committed a crime which would banish him from society, it is not necessary to decide" Another principle was asserted in this case, that the place of a trustee in an eleemosynary corporation, though no emoluments are attached to it, is a franchise of such a nature that a person improperly dispossessed of it is entitled to redress by mandamus. See also *Dartmouth College* v. *Woodward*; 4 Wheaton, 676.

In the case of *Gray* v. *The Medical Society of Erie*, 24 Barbour's R 570, a physician was asking to be restored to a society from which he had been expelled for violating a by-law that prescribed a tariff of fees for medical services The Supreme Court of New York went very fully into the authorities upon corporate powers, and held that the power given to medical societies by statute to make by-laws and regulations relative to the admission and expulsion of members, was not an arbitrary or unlimited power, and that a by-law must be reasonable, and adapted to the purposes of the corporation.

In the case of *The Comm'th* v *Philanthrophic Society*, 5 Binn. 486, we have in our own courts what is very rare in the authorities an instance of expulsion that was sustained. A member made a demand upon the society for relief agreeably to the rules of the institution, and presented a physician's bill which he had altered from four to forty dollars, and which he claimed to have paid Upon the ground that this was a scandalous crime, amounting almost, if not quite, to technical forgery, and that it was directly injurious to the society, his expulsion was supported.

In *Comm'th* v *The Franklin Beneficial Association*, 10 Barr, 357, a member was restored who had been expelled for enlisting in the army in violation of a by-law of the society.