

to pay and the master who is to receive. It is a singular working arrangement where one of the parties may take the lion's share. And it was said at the argument that the contractors were only the mandataries, the agents of the company! But it is a principle that the mandator may at any time revoke the powers of his mandatory. He may expose himself to an action of damages, but that is not the question. It is strictly within his right, C. C. L. C., 1756. "The mandator," says this article, "may at any time revoke the mandate." But can the company here revoke the agreement before the term fixed, even by payment of damages? Evidently not, and the company so well understood this that it stipulated for the revocation of the agreement *ipso facto* in case the contractors failed to pay within a certain delay. If the company were going on its own authority, except in the case provided for, to take possession of the lines, &c., transferred to the Great Northwestern, the latter would easily find means of preventing it.

A great number of authorities and an equal number of decisions have been cited on one side or the other, as to the interpretation of agreements similar to that in question here. I have read with the greatest attention the larger part of the decisions cited, and in every case the question is reduced to this: whether a corporation has ceded its powers or abandoned some of its franchises. By the agreement between the parties here the Montreal Telegraph Company abandoned all its lines, all its stations, all its properties used for the transaction of business and the operation of the lines, and reserved no control over the other company, transferee, which has the right to construct new lines, to repair old ones, to collect charges for transmission of messages, to fix the rates, and this for the term of 97 years. The Montreal Telegraph Company has no longer a right through its directors, as its charter provides, to fix absolutely and without restriction the charges or rates to be taken for the transmission of messages. They can no longer, as the same charter provides, declare dividends out of the profits, and they can no longer make a detailed statement of the business, profits and losses of the company, and, to use the language of Vice-Chancellor Turner, in the case of Great Northern Railway against Eastern Counties Railway, reported in 21 Law J., Chancery, p. 837, "it is impossible to read the agreement between the plaintiffs and the East Anglian Railway Company (in the present case between the Montreal Telegraph Company and the Great Northwestern) without being satisfied that it amounts to an entire delegation to the plaintiffs, (defendants) of all the powers conferred by the charter." Discussing agreements of this nature, Judge Wells, in a case reported in the 115th volume of the Massachusetts Reports, p. 351, said:—"They are not merely contracts by which another party is employed to operate the road on behalf and under the direction and con-

trol of the corporation owning the franchise, receiving a share of the profits as compensation. The entire control of the road, with all its franchises, is transferred, the corporation owning it receiving in return only a fixed rent, payable in the form of a dividend to its stockholders." And Judge Miller in the case of Thomas against Railroad Company, reported in 101 U. S. Rep. pp. 82, 83, after quoting the opinion of English judges, and the various decisions of the English courts, adds:—"The true principle is that where a corporation like a railroad company has granted to it by charter a franchise intended in large measure to be exercised for the public good, the due performance of those functions being the consideration of the public grant, any contract which disables the corporation from performing those functions, which undertakes without the consent of the State to transfer to others the rights and power conferred by the charter, and to relieve the grantees of the burden which it imposes, is a violation of the contract with the State, and is void as against public policy. This doctrine is asserted with remarkable clearness in the opinion of this Court by Mr. Justice Campbell" (in the York Maryland Line R. R. & Vincent, 17 How. p. 30.)

To state my opinion on this point, I think in principle a corporation has a right to make any agreement, either for the division of profits or for the working of its business, but so as never to lose control of its rights and privileges, nor to transfer or abandon any of its franchises.

The clause of the Montreal Telegraph Company's charter has been invoked, as well in the original Act 10 and 11 Vict., chap. 83, as in the Act, 18 Vict. chap. 207. This clause would seem to give the Company the right to make a lease and to let, convey, or otherwise part with all its estate real, personal, or mixed; but evidently this clause cannot have the effect of giving the company a right to delegate its privileges and franchises; for, in fact, it cannot let or convey its property except for its benefit and advantage; but that applies to property no longer required for the working of its business, and not to a letting or conveyance which, so to speak, deprives it of its existence as a corporation; for in the state to which the corporation is reduced it has almost ceased to have a moral existence; it is, so to speak, no more than a shadow. As Chancellor Zabriskie says, in the case of Copeland v. The Citizens Gas Co. (61 Barbour's Rep., p. 76):—"It may be considered as settled that a corporation cannot lease or alien any franchise or any property necessary to perform its obligations and duties to the State, without legislative authority. The franchises granted by the State are often parts of the sovereign power delegated to a subject, and always privileges to which other citizens are not entitled. In these grants, the state is supposed to regard the character of the grantee. In this case the franchise of maintaining a canal and railroad across public highways and navi-