

difficulty has thus arisen in applying to such cases the equitable doctrine of conversion, and determining whether the subject matter of the donation were sufficiently impressed with the character which the donor intended to impart to it. If money were directed by a testator to be laid out in the purchase of land for charitable uses, the sum so bequeathed became, in the eyes of equity, real estate, and the bequest was, therefore, void. The direction as to its conversion into realty, however, might not be sufficiently imperative to alter the legal incidents of the subject of the grant; and hence great litigation has frequently arisen between the representatives of the donor and the declared objects of his bounty. Moreover, a donation might have been intended to be made out of personalty; but, if it becomes necessary to resort to the real estate of the donor so far the gift fails. Before directing the attention of the reader to the remedy for these evils, a brief statement of the origin and development of the mortmain laws, and of some of the cases in which their application has been found most difficult, may facilitate a right comprehension of the necessity, as well as of the efficacy, of the remedy we propose. This is, indeed, almost too obvious to require much advocacy, were it not so long overlooked. It appears to us to consist in the abolition of the distinction of possessions into real and personal so far as the Mortmain Acts are concerned, and the enactment of a single comprehensive measure which will apply equally to all descriptions of property.

Corporations had at common law a capacity to take lands, but not without a license both from the lord of the seignior and from the Sovereign, the lord paramount of all estates in the kingdom. Under the feudal law, the lord of a seignior was entitled to certain services or fines upon the succession of the heir, or the marriage of a daughter, of his tenant; and if the latter attempted to settle or alien the land in any manner that would abridge these privileges of the lord, the latter could enter for a forfeiture, the tenant having thus committed a breach of fealty, in violation of the terms of the feudal compact. But a corporation had no daughters upon whose marriage the lord could obtain the usual reliefs, nor heirs, since in construction of law it never died, and "*Nemo est heres viventis*." The alienation of lands to such a body being thus a virtual renunciation of all seigniorial claims, a license from the lord and from the Crown was necessary even at common law. A similar dispensing power existed in the civil law, which ordained that a special privilege was indispensable to enable a corporation to take lands. *Collegium, si nullo speciali privilegio subnixum sit, hereditatem capere non posse, dubium non est*, Cod. 6, 8, 24. The English legislature added other restrictions, upon the ground that lands thus alienated were removed from the active use of commerce for a period beyond that allowed by the rule against perpetuities. The true reason, however, why alienations in mortmain were discountenanced by the feudal nobility of the middle ages is probably to be ascribed, not so much to the regard which the aristocracy of that period entertained for the interests of commerce, as it is to their losses of aids, reliefs, &c., before-mentioned, and also to their jealousy of the growth of ecclesiastical power. Of the many explanations of the primary sense of the word Mortmain offered by Sir Edward Coke, 1 Inst. 2, the most probable is the one preferred by Blackstone, viz., that religious persons being dead in law, lands holden by them were in *mortui manu*. The term is at present used to denote all the possessions of corporations, whether these be religious or lay, and is used chiefly to express the dead and unserviceable character of such possessions, so far as the purposes of commerce are concerned. Our readers are, of course, aware that most of the peculiar complications of English law, and its administration in the distinct channels of law and equity, have arisen from the conflict for pre-eminence that has so long existed between the common and the civil law. The statutes which directly or indirectly affect alienations in mortmain indicate, like so

many legal epochs, the successive stages of this juridical contest, and illustrate the gradual development of our present law of real property.

Magna Charta (9 Hen. III., c. 36) was the first mortmain statute. It forbids the giving of lands to religious houses, which were almost the only corporations then in being. The statute 7 Ed. I., c. 2, extended the prohibition to grants made to the secular clergy. Notwithstanding this statute, however, grants to such corporations are only voidable and not void, unless they be made for charitable uses, within the meaning of the statute of 9 Geo. II., c. 36, in which case they are absolutely void. A lease for twenty, or even ninety-nine years, appears not to be within the former statute, but the law is otherwise as to lease for a long term. The statute 13 Ed. I., provided that religious corporations should derive no benefit from recoveries, and the same bodies are excepted in the statute *Quia Emptores*, 18 Ed. I., c. 1., by which tenants obtained full power to alien their lands. The 15th Rich. II., c. 2, likewise exempts religious houses from the benefit of trusts. This statute was the first Mortmain Act passed in respect to lay corporations; it extended to these the provisions of the statute 7 Ed. I., c. 2. The statute 23 Hen. VIII., c. 10, which is the Act against superstitious uses, prohibits alienations of land made for devotional purposes to non-corporate bodies, such as churchwardens, &c. Such donations, it appears, were not within the previous statutes of mortmain, and were not void, although constituting a perpetuity. This was allowed probably on the ground of the prevalence of the custom. The statute 9 Geo. II., c. 36, completes our list of the Mortmain Acts. The object of that Act, however, is not to prevent alienations in mortmain, but to prescribe certain formalities to grants of land for charitable purposes. Alienations in mortmain were not made void by the statutes passed prior to this Act, so as to let in the grantor or his heirs, but amounted to a forfeiture of the lands to the superior lord. Menne lords, however, as also the sovereign, the lord paramount, could dispense with their own privileges—*Quilibet potest renunciare juri pro se introducto*. A license from these was, therefore, efficacious, notwithstanding the mortmain statutes. After the feudal tenures were abolished by the statute 12 Car. II., c. 24, the value of a seignior became much diminished. Moreover, few menne seignories existed even at that period, owing to the long operation of the statute, *Quia Emptores*, which has prevented subinfeudation. The statute 7 & 8 Wil. III., c. 37, accordingly, has vested in the Crown alone full powers to dispense with the statutes of mortmain. But, as at common law, no devise of lands was good, and as corporations are expressly excepted in the statute of wills, 32 Hen. VIII., c. 1. no devise lands to a corporation was valid until the statute 43 Eliz. c. 3, allowed such devises in cases of charities. This exception has been greatly narrowed by the statute, 9 Geo. II. c. 36. The first section of this statute enacts that no manors, lands, or hereditaments, chattels, or sums of money to be laid out in the purchase of lands, shall be given or granted to any person or body politic for the benefit of any charitable uses whatsoever, unless the conveyance be by deed indented, sealed, and delivered in the presence of two witnesses, twelve months before the death of the grantor, and enrolled within six months next after its execution. The same section also enacts that donations of stock, to be valid, should be completed by an actual transfer six months before the death of the donor, and that all grants of land and of money or stock to be laid out in the purchase of land, be made to take effect immediately in possession for the intended charitable use, and be without any power of revocation or reservation whatsoever for the benefit of the donor. The second section exempts grants for valuable consideration from the previous provisions as to the sealing and delivery of the deeds of grant and as to the transfer of stock at the specified periods, respectively, before the grantor's death. Such deeds, however, are equally as liable to all the