

CHAPTER XXIV.

CAPACITY OF CORPORATIONS TO PURCHASE AND CONVEY REAL PROPERTY.

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| <p>§ 401. Capacity of corporation to take title at common law—Statutes of mortmain.</p> <p>402. Capacity to take title—May take in fee though its duration is limited.</p> <p>403. Effect of corporation's dissolution on title.</p> <p>404. May purchase and hold only lands appropriate to corporate purposes—Presumption that land is so held.</p> | <p>§ 405. When its power is exceeded the state only may complain—Conveyance to corporation in such case voidable, not void.</p> <p>406. Capacity of private corporation to alienate real property.</p> <p>407. Capacity of public and quasi-public corporations to alienate real property.</p> |
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§ 401. Capacity of corporation to take title at common law—Statutes of mortmain.—At common law a corporation has capacity to purchase and hold such lands as are reasonably required for the purposes of its creation without any special authority.¹

By a series of "statutes of mortmain,"² designed primarily to prevent the accumulation of lands by ecclesiastical foundations—bodies having some of the attributes of the later "corporation"³—this power was, in England, taken from corporations, both ecclesiastical and lay,⁴ which were prohibited from purchasing lands with-

¹ *Lathrop v. Commercial Bank*, 8 Dana 114; 33 Am. D. 481; *First Parish in Sutton v. Cole* 3 Pick. 232, 239; *Page v. Heineberg*, 40 Vt. 81; 94 Am. Dec. 378.

² Beginning with *Magna Carta* (1225), 9 Hen. III, c. 36.

³ See *Poll. & Mait. Hist. Eng. L.*, 2d ed. I, pp. 494 et seq.

⁴ (1391) 15 Rich. II, c. 5.

out a license from the crown (and originally also from the lord, if any, from whom the land was held); the violation of the prohibition being a cause for forfeiture.

Though these statutes of mortmain have not been recognized as being in force in this country,⁵ except in Pennsylvania,⁶ their policy has been adopted where restrictions have existed on the power of corporations to acquire real estate by devise,⁷ or on their power to acquire more than a specified amount of land, a restriction frequently imposed by statute on religious and charitable corporations especially.

§ 402. Capacity to take title—May take in fee though its duration is limited.—The capacity of corporations in this country being unaffected by the English statutes of mortmain, they may take, hold and convey such lands as are reasonably necessary for carrying out the business for which they were created unless some restriction is imposed by their charters or by statute.⁸ A corporation, moreover, though its duration is limited,⁹ may take an estate in fee, so that it may convey title in fee; its grantee's title being unaffected by its own subsequent dissolution.¹⁰

§ 403. Effect of corporation's dissolution on title.—It has been said that at common law, on the dissolution of

⁵ See decisions note 1, *supra*, and *Perrin v. Carey*, 24 How. (U. S.) 465, 498; *Mallett v. Simpson*, 94 N. C. 37; 55 Am. R. 594; *Fayette Land Co. v. Louisville &c. R. Co.*, 1896, 93 Va. 274; 24 S. E. 1016.

⁶ *Methodist Church v. Remington*, 1 Watts 218; 26 Am. D. 61. A corporation is not prevented from acquiring lands, but from holding those which it has acquired without a license. *Leazure v. Hillegas*, 7 Serg. & R. 313; 1 *Wilgus Corp. Cas.* 1008.

⁷ *Downing v. Marshall*, 23 N. Y. 366; 80 Am. D. 290; *In re McGraw's Estate*, 111 N. Y. 66, 137; 19 N. E. 233; 2 L. R. A. 387; 1 *Wilgus Corp. Cas.* 1034.

⁸ *Thompson v. Waters*, 25 Mich. 214; 12 Am. R. 243.

⁹ *Nicoll v. N. Y. & E. R. Co.*, 12 N. Y. 121; *Bailey v. Platte &c. Canal Co.*, 12 Colo. 230.

¹⁰ *Wilson v. Leary*, 1897, 120 N. C. 90; 26 S. E. 630; 58 Am. St. R. 778; 1 *Wilgus Corp. Cas.* 903. As to the use of the word successors in creating a fee, see *ante*, § 137.

a corporation its real estate reverted to the original grantor or his heirs,¹¹ but whether this is a correct statement of the common law or not,¹² the modern doctrine is that on the dissolution of a private business corporation, lands held by it are disposed of as part of its assets, and do not revert to the grantor.¹³

On the dissolution, however, of a charitable corporation, not organized for the purposes of private gain or profit, the rule that its real estate reverts to the donor is sometimes applied,¹⁴ though in such a case the property is said to be still subject to the charitable use—at least where no private donor is entitled to it,—or if this use is contrary to public policy it is subject to a legitimate charitable use conforming as nearly as practicable to that to which the property was originally dedicated.¹⁵

§ 404. May purchase and hold only lands appropriate to corporate purpose—Presumption that land is so held.—Statutory provisions are general in the United States declaring that private business corporations may acquire, hold and convey such real property as may be necessary for the transaction of their business, and limitations are at the same time often placed upon the power thus conferred. But without regard to such statutes it is a settled general principle that corporations have the right to purchase and hold such real property, and such only, as is necessary or reasonably convenient for carrying out their

¹¹ *State Bank v. The State*, 1 Blackf. 267; 12 Am. D. 234; 1 *Wilgus Corp. Cas.* 891; *Bingham v. Weiderwax*, 1 N. Y. 509.

¹² See *Gray Perpetuities*, §§ 44, 50, 51.

¹³ *People v. O'Brien*, 111 N. Y. 1; 18 N. E. 692; 7 Am. St. R. 684; 2 L. R. A. 255; 2 *Wilgus Corp. Cas.* 1426.

¹⁴ See *Danville Seminary v. Mott*, 1891, 136 Ill. 289; 28 N. E. 54, there having been generally in such cases a gift without consideration for a particular purpose, such a reverter resembles that which may occur on the breach of an express condition subsequent. *Mott v. Danville Seminary*, 129 Ill. 403, 415; 21 N. E. 927.

¹⁵ *Mormon Church v. United States*, 1890, 136 U. S. 1; 1 *Wilgus Corp. Cas.* 906.

legitimate corporate purposes;¹⁶ when, however, a purchase of lands has been made by a corporation there is, in general, a presumption, in the absence of evidence to the contrary, that the purchase was made for a legitimate purpose, and the contrary must be shown by one alleging it.¹⁷

§ 405. Where its power is exceeded the state only may complain—Conveyance to corporation in such case voidable, not void.—Moreover, the question whether a corporation which has acquired title to real estate has exceeded its powers in so doing is one that can be raised, generally speaking, only in a proceeding instituted in behalf of the state (or the national government in proper cases),¹⁸ and even if the corporation has exceeded its powers, a forfeiture of the lands so acquired does not follow as a consequence unless this is made by statute the penalty for the corporation's act.¹⁹

Therefore, though the law of a state provided that no foreign or domestic corporation maintained for pecuniary profit should purchase or hold real estate in the state except as provided for in the act, and a foreign corporation, without attempting to comply with the provisions of the act relating to foreign corporations, purchased lands in the state and afterward conveyed them, it was held that the conveyance to the corporation was not void, but void-

¹⁶ *Case v. Kelly*, 1890, 133 U. S. 21; 1 *Wilgus Corp. Cas.* 1012; *South and North Alabama R. Co. v. Highland Ave. R. Co.*, 1898, 119 Ala. 105; 24 So. 114; *People v. Pullman's Palace Car Co.*, 175 Ill. 125; 51 N. E. 664; 1 *Wilgus Corp. Cas.* 926.

¹⁷ *Stockton Savings Bank v. Staples*, 1893, 98 Cal. 189; 32 Pac. 936; 1 *Wilgus Corp. Cas.* 1007; *Regents of University v. Detroit Y. M. Soc'y*, 12 Mich. 138; *Conn. Mut. L. Ins. Co. v. Smith*, 1893, 117 Mo. 261; 22 S. W. 623; 38 Am. St. R. 656.

¹⁸ *National Bank v. Matthews*, 98 U. S. 621.

¹⁹ *People v. Stockton Savings & Loan Soc'y*, 1901, 133 Cal. 611; 65 Pac. 1078; 85 Am. St. R. 225; *Commonwealth v. N. Y. &c. R. Co.*, 1890, 132 Pa. St. 591; 19 Atl. 291; 1 *Wilgus Corp. Cas.* 1014; *Fayette Land Co. v. Louisville &c. R. Co.*, 1896, 93 Va. 274; 24 S. E. 1016. See "Consequences of illegal or ultra vires acquisition of real estate by a corporation," A. M. Alger, 8 Harv. L. R. 15.

able at the instance of the state, and that title passed to the corporation which then could convey good title not subject to be defeated by one holding from the grantor of the corporation.²⁰

Where the corporation has power to acquire title to land at all, its power in a particular instance to hold land already conveyed to it cannot be questioned by the grantor himself,²¹ or by his heirs,²² or by his subsequent grantee,²³ or by his creditors.²⁴ And, on the other hand, the corporation is itself estopped, and cannot, for example, defeat the foreclosure of a mortgage executed by it on the ground that it was not authorized by law to acquire title to the land mortgaged.²⁵

As the corporation may in such cases convey good title, one that has contracted to purchase lands from it may be compelled by a court of equity to perform his contract, and cannot successfully defend a suit brought by the corporation for specific performance, on the ground that the corporation could not acquire title to the lands;²⁶ nor may the grantee of a corporation, when it is sought to enforce the conditions of the conveyance under which he has taken title, deny the validity of the title conveyed to him, alleging the incapacity of the corporation to hold the land.²⁷

²⁰ *Fritts v. Palmer*, 132 U. S. 282.

²¹ *Long v. Georgia Pacific R. Co.*, 1890, 91 Ala. 519; 8 So. 706.

²² *Shelby v. Chicago &c. R. Co.*, 1892, 143 Ill. 385; 32 N. E. 438; *Mallett v. Simpson*, 94 N. C. 37; 55 Am. R. 594. That the heirs of deviser may not complain in such a case, see *Farrington v. Putnam*, 1897, 90 Maine 405; 37 Atl. 652; 1 *Wilgus Corp. Cas.* 1029; 38 L. R. A. 339. Contra, that they may complain, see *In re McGraw's Estate*, 111 N. Y. 66; 19 N. E. 233; 2 L. R. A. 387; 1 *Wilgus Corp. Cas.* 1034.

²³ *Hafner v. St. Louis*, 1901, 161 Mo. 34; 61 S. W. 632.

²⁴ *Gilbert v. Berlin*, 1900, 70 N. H. 396; 48 Atl. 279.

²⁵ *Butterworth & Lowe v. Kritzer Milling Co.*, 1897, 115 Mich. 1; 72 N. W. 990. See *Hagerstown Mfg. &c. Co. v. Keedy*, 1900, 91 Md. 430; 46 Atl. 965.

²⁶ *Banks v. Poitiaux*, 3 Rand. 136; 15 Am. D. 706.

²⁷ *Cowell v. Springs Co.*, 100 U. S. 55; and that a lessee of corporation may not deny its title on such grounds when sued for rent or posses-

A distinction, however, is made in the application of this general rule, that the state only may complain when a corporation exceeds its power in taking real estate, between contracts or conveyances that are incomplete or executory and those that are completed. While the courts will not generally interfere, except at the instance of the state, to deprive a corporation of land already acquired by it, they will not aid it to acquire land which it has not authority to hold.²⁸

§ 406. **Capacity of private corporation to alienate real property.**—A corporation having general capacity to take title to real property has as an incident to its ownership authority and capacity in general to alienate such property.²⁹ Moreover, although a corporation may not in a particular instance have the power to retain land which it has acquired, as against the state, yet, until the state complains, it may, as the decisions previously cited indicate, convey good title to its own grantee; and it may grant to another corporation rights to use land for a purpose within the powers of the grantee corporation, though it could not itself use the land for the same purpose.³⁰

But whether a corporation has the same power to alienate its real property that an individual has will depend upon the character of the corporation and the nature of its duties to the public, for some corporations are under greater disabilities in this regard than others are.³¹

sion, see *Rector v. Hartford Deposit Co.*, 1901, 190 Ill. 380; 60 N. E. 528; *First Eng. Evangelical Church v. Arkle*, 1901, 49 W. Va. 92; 38 S. E. 486.

²⁸ *Case v. Kelly*, 133 U. S. 21; 1 *Wilgus Corp. Cas.* 1012; *Pacific R. Co. v. Seely*, 45 Mo. 212; 100 Am. D. 369.

²⁹ The case of *Sutton's Hospital*, 10 Coke 30a. Some matters of form have already been referred to: execution of conveyance by corporation, ante, §§ 240, 241; the corporate seal, § 249; acknowledgment, § 294.

³⁰ *Benton v. Elizabeth*, 1898, 61 N. J. L. 411, 693; 39 Atl. 683, 906; 40 Atl. 1132.

³¹ See next section.

A private corporation, having no peculiar public duties to perform, has full power to dispose of its property, unless specially restrained, if such disposition is assented to by its stockholders and does not injuriously affect creditors; ⁸² and it has been held that it may dispose of its entire property by direction of a majority of its stockholders who, in the exercise of a sound discretion, deem it expedient to do so and thus close its business to prevent a loss. ⁸³

But a distinction as to the power of a majority of the stockholders to direct an alienation of its property has been made between such cases as these and those where such an alienation would have the effect of putting an end to a corporation which was doing a fairly prosperous business for which it was organized, and which it might have continued but for the alienation of its property. It has been held that under such circumstances the transfer will not be sustained as against dissenting stockholders, ⁸⁴ and that not only minority stockholders but the state may properly complain of the action of the majority stockholders. ⁸⁵

§ 407. Capacity of public and quasi-public corporations to alienate real property.—Much of the real property of a municipal corporation is held by it in trust for the public, and the duties imposed by this trust can be properly discharged only when it continues in the man-

⁸² *Aurora Agricultural &c. Society v. Paddock*, 80 Ill. 263; 1 *Wilgus Corp. Cas.* 1065; *Holmes &c. Mfg. Co. v. Holmes &c. Metal Co.*, 1891, 127 N. Y. 252; 27 N. E. 831; 24 Am. St. R. 448; *Spokane v. Amsterdam Sch. Trustees*, 1900, 22 Wash. 172; 60 Pac. 141.

⁸³ *Treadwell v. Salisbury Mfg. Co.*, 7 Gray 393; 66 Am. D. 490; 2 *Wilgus Corp. Cas.* 1787; *Phillips v. Providence Steam Engine Co.*, 1899, 21 R. I. 302; 43 Atl. 598; 45 L. R. A. 560.

⁸⁴ *Harding v. American Glucose Co.*, 1899, 182 Ill. 551; 55 N. E. 577; 74 Am. St. R. 189; *Forrester v. Boston & Montana Copper Co.*, 1898, 21 Mon. 544, 565; 55 Pac. 229, 353.

⁸⁵ *People v. Ballard*, 1892, 134 N. Y. 269; 32 N. E. 54; 17 L. R. A. 737; 1 *Wilgus Corp. Cas.* 1066.

agement and control of such property. It cannot relinquish its management and control by an alienation of such of its lands as the public has an interest in. Therefore, streets and parks which have been dedicated or set apart for public purposes, and property of similar character, may not generally be conveyed by the municipal authorities.⁸⁶

But a municipal corporation may have title to real property which has not been dedicated to a public use, and which is held much as an individual holds his property. As an incident to its ownership of such property the corporation has power to alienate it unless restrained by its charter or a statute.⁸⁷

Quasi-public corporations that have obtained franchises in consideration of the discharge of duties in which the public is interested cannot deprive themselves, without special authority, of such property as is necessary to the proper discharge of these duties. Railroad companies are the most familiar bodies of this class, and the rule has been frequently applied to them when, under various forms of alienation, attempts have been made to transfer all or the chief part of their real property,⁸⁸ though they may convey such of their real property as is not needed for railway purposes.⁸⁹ Among other kinds of quasi-public corporations to which the rule has been applied are plank-road and turnpike companies, gas and electric

⁸⁶ *San Francisco v. Itsell*, 80 Cal. 57; 22 Pac. 74; *Methodist Church v. Hoboken*, 33 N. J. L. 13; 97 Am. D. 696; *Brooklyn Park Com'rs v. Armstrong*, 45 N. Y. 234; *Southport v. Stanley*, 1899, 125 N. C. 464; 34 S. E. 641.

⁸⁷ *Ames v. San Diego*, 1894, 101 Cal. 390; 35 Pac. 1005; *Chicago v. Middlebrooke*, 1892, 143 Ill. 265, 269; 32 N. E. 457; *Fort Wayne v. Lake Shore &c. R. Co.*, 1892, 132 Ind. 558; 32 N. E. 215; 32 Am. St. R. 277.

⁸⁸ *Oregon Railway v. Oregonian Railway*, 130 U. S. 1; *Memphis &c. R. Co. v. Grayson*, 88 Ala. 572; 7 So. 122; 16 Am. St. R. 69; *Middlesex R. Co. v. Boston &c. R. Co.*, 115 Mass. 347; *Coe v. Columbus &c. R. Co.*, 10 Ohio St. 372; 75 Am. D. 518.

⁸⁹ *Branch v. Jesup*, 106 U. S. 468, 478; *Yates v. Van De Bogert*, 56 N. Y. 526; *Walsh v. Barton*, 24 Ohio St. 28.

lighting companies and canal companies and other corporations charged with the performance of public duties.⁴⁰

⁴⁰ *Snell v. Chicago*, 1893, 152 U. S. 191; *Ammant v. New Alexandria Turnpike Co.*, 13 Serg. & R. 210; 15 Am. D. 593; *Visalia Gas &c. Co. v. Sims*, 1894, 104 Cal. 326; 37 Pac. 1042; 43 Am. St. R. 105; *Brunswick Gas Light Co. v. United Gas Co.*, 1893, 85 Maine 532; 27 Atl. 525; 35 Am. St. R. 385. See *Central Trans. Co. v. Pullman's Palace Car Co.*, 139 U. S. 24.